

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) CASE NO: 22-33553-cml
)
) Houston, Texas
)
ALEXANDER E. JONES,)
Debtor.) Friday, January 20, 2023
)
) 10:04 A.M. TO 12:43 P.M.
-----)

) CASE NO: 22-60043-cml
)
)
FREE SPEECH SYSTEMS, LLC,)
Debtor.)
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STATUS CONFERENCE

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

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1 HOUSTON, TEXAS; FRIDAY, JANUARY 20, 2023; 10:04 A.M.

2 (Call to Order)

3 MR. RUFF: Your Honor, I did have a chance to talk
4 with Mr. Shannon about the exhibits. You know, from our
5 perspective, I mean, the record is the record already. And
6 so the extent we're trying to introduce anything new into
7 the record, we object. And to the extent something is
8 already in the record, it's there.

9 THE COURT: What I think we can do, I think I can
10 admit 1 through 12 for purposes of this motion, not for
11 purposes of -- the purposes -- you're making your case
12 whether I grant the rehearing and then open the record. But
13 nothing that I introduce today obviously can be considered
14 part of the record in the prior hearing, the prior hearing
15 stands for itself. If what you're asking me to do is admit
16 that these are the documents that you admitted in support of
17 the relief requested today for that purpose, I'm okay with
18 it.

19 MR. RUFF: Okay.

20 THE COURT: All right?

21 MR. SHANNON: And, Your Honor, Exhibits 13 through
22 26 we had submitted as demonstrative of the evidence that
23 would be submitted at a hearing because -- you know, talk
24 about what that evidence would look like. So I think on the
25 basis that the Court just said, that it's not in the record

1 as evidence, that would apply to those as well.

2 THE COURT: Right, but you just said that they are
3 demonstrative, right? Now, if you want to just put on the
4 demonstrative, you can. But I'm not going to admit a
5 demonstrative into evidence. As well as Exhibit 27, which
6 is the presentation.

7 MR. SHANNON: Right.

8 THE COURT: But it certainly will be part of the
9 hearing if you go through it.

10 MR. SHANNON: Okay.

11 THE COURT: I'll give you every opportunity. I'm
12 going to give you as much time as you need. You obviously -
13 - you took a lot of time to prepare stuff, and I'm going to
14 sit here and I'm going to listen to every word you say.

15 MR. SHANNON: And it goes quicker than it looks,
16 Your Honor.

17 THE COURT: No, no, no. That's not intended to
18 rush you. It's intended to just say this is serious
19 business and I want to make sure that you have every
20 opportunity to make the case.

21 MR. SHANNON: Thank you, Your Honor.

22 So I do think it makes some sense to start with
23 the background here, Judge. We are here because the Court
24 denied the Debtor's application to employ Shannon & Lee.
25 And again, I'm just here for Shannon & Lee. Mr. Ridulfo is

1 here for Mr. Schwartz. But the Court's ruling appears to be
2 based on the conclusion that Shannon & Lee is at least
3 potentially not a disinterested person due to a
4 predisposition under circumstances that render the
5 predisposition and interest materially adverse to the
6 Debtor's bankruptcy.

7 The actual adverse interest wasn't articulated in
8 that ruling, but the Court mentioned the ability to make
9 difficult decisions with respect to Alex Jones PQPR. But
10 the Court did leave open --

11 THE COURT: Hold on a second.

12 All right, folks. You're going to have to hit
13 five-star.

14 Please continue.

15 MR. SHANNON: But the Court did leave open some
16 questions about where the ruling leaves Shannon & Lee in
17 terms of retention for the work that was already done and
18 the compensation for those services provided prior to the
19 Court's ruling. And I do think that was consistent with
20 some of the cases that were mentioned in that ruling,
21 particularly LTHM Houston Operations LLC. I also think it's
22 consistent with what I understand to be the Court's ruling,
23 which was that the Debtor failed to meet its burden of proof
24 since no party asserted that Shannon & Lee actually had an
25 adverse interest. And --

1 THE COURT: Let me ask you a question. Say one of
2 the standards for confirmation under 1129 is good faith and
3 no party raises an objection. Do you still have to -- does
4 the Debtor still have to prove good faith in connection with
5 confirmation?

6 MR. SHANNON: Yes, Your Honor. But I think that
7 failing to prove it doesn't establish bad faith. It
8 establishes that they failed to meet the burden of proof.

9 THE COURT: Does the Debtor still have the burden
10 to prove good faith even if no one else objects to it?

11 MR. SHANNON: You know, what that burden means in
12 that situation --

13 THE COURT: I'm just asking you. You've got to
14 prove 1129. I've got to make a finding that there's good
15 faith. Right? Does the Debtor still have to prove good
16 faith, or can I just overlook it and say oh, I need to make
17 a separate finding on good faith? I'll give you another
18 example. Say the Debtor wants to assume an executory
19 contract. Nobody raises an objection about the assumption.
20 Does this Debtor still need to meet the burden to assume a
21 contract under 365 or reject it?

22 MR. SHANNON: Well, Judge, I think without an
23 objection --

24 THE COURT: I should just sign orders?

25 MR. SHANNON: Well, Bankruptcy Local Rule 9013-

1 1(g) says, you know, allegations in a pleading -- well, it
2 incorporates Rule 8 of the Federal Rules of Civil Procedure.
3 If there's not an objection to a pleading --

4 THE COURT: I should just sign it?

5 MR. SHANNON: Well, Judge, I think -- and what we
6 were really arguing is that if you raise it, Judge, it
7 should be raised before a hearing so that someone can say
8 okay, I need to prove that to the Judge.

9 THE COURT: So the Code says let's just say good
10 faith. Right? Or the plan is feasible. So somebody has to
11 object to that even though the Code says it? Someone has to
12 raise it and the judge has to say, well, what about
13 feasibility, what about good faith, and what about
14 1129(a)(7), (a)(10)? I've got to then raise the issue so
15 that the Debtor knows that they've got to satisfy the Code?

16 MR. SHANNON: I think, Judge, that if no one
17 raises the issue, what I'm really saying is that, well, what
18 is the outcome of the finding that I'm not going to confirm
19 the plan.

20 THE COURT: So then I've got to say, oh, nobody
21 raised 1129(a)(7), you get another rehearing to prove
22 because no one did? You didn't have to prepare for it? Or
23 should you just have to prepare for it?

24 MR. SHANNON: I just think what does that ruling
25 mean when you would deny it because they have not met the

1 burden of proof. It doesn't mean -- it doesn't prove the
2 opposite. Right? Failing to meet a burden of proof doesn't
3 prove, again, the opposite.

4 THE COURT: So I should -- if the Debtor doesn't
5 meet its burden, I should just sign the order?

6 MR. SHANNON: No. I think that if the Debtor
7 doesn't meet its burden, you should essentially do what
8 we're saying here and what LTHM --

9 THE COURT: Give them a round two and if they
10 don't do it in round two, then let's do it round three until
11 they finally get it right?

12 MR. SHANNON: I don't think there can be a round
13 three. Because if you say you didn't raise this, you need
14 to present evidence. I'm not going to grant it based on the
15 evidence in front of me. You kind of -- then it's raised
16 and so then there would be no round three. It would be a
17 round two.

18 THE COURT: So now the United States Trustee has
19 the burden to identify every issue. So now the Trustee is
20 now going to have to file pleadings identifying every
21 potential objection that it could raise and that's going to
22 be the standard for moving going forward in this district?

23 MR. SHANNON: I think that's what the bankruptcy
24 local rules require. That's what Federal Rule of Civil
25 Procedure 8 requires.

1 THE COURT: So you're saying under 1129 -- let's
2 just say there's questions about feasibility of the plan.
3 Evidence is presented on the feasibility of the plan. No
4 one raises the feasibility issue, the judge should just sign
5 the order?

6 MR. SHANNON: No, that's not what I'm saying,
7 Judge. I'm saying that you should raise it.

8 THE COURT: We'll give you a do-over.

9 MR. SHANNON: That you should raise it and say no
10 one argued this, you need to come back and convince me about
11 this.

12 THE COURT: Okay.

13 MR. SHANNON: And that's why we're seeking -- this
14 is a Rule 59(a) motion, not a Rule 59(e) motion. Because I
15 actually agree with you that if you're not convinced, then a
16 Rule 59(e) motion isn't really the appropriate way. It's
17 Rule 59(a).

18 THE COURT: Okay.

19 MR. SHANNON: So to address the Court's questions,
20 again, we filed two motions. The one we're here on today is
21 the Rule 59 motion. We also filed an administrative expense
22 motion. We're not here on that today. But I do want to
23 talk about a comparison of the relief requested between
24 these two.

25 In the Rule 59 motion what we are requesting is a

1 rehearing. Right? To present that evidence that because it
2 wasn't an issue identified but the Court raise it, we want
3 to actually present that evidence, to have it actually be an
4 issue in controversy, despite the fact that it wasn't raised
5 and disinterestedness would have been deemed admitted under
6 Bankruptcy Local Rule 9013(g) --

7 THE COURT: During the hearing, for example, you
8 asked Mr. Lee if he had ever taken a position contrary to
9 Mr. Jones. And he highlighted an issue with -- in
10 connection with the cash collateral order. And then I
11 corrected him and said that was an issue that I raised but
12 the Debtor had actually filed a motion. How is that
13 (indiscernible)? Doesn't that go to disinterestedness?

14 MR. SHANNON: Well, Judge, at the beginning of the
15 hearing --

16 THE COURT: Who asked the question?

17 MR. SHANNON: Judge, at the beginning of the
18 hearing, you mentioned about whether there was a conflict,
19 right? And so there was evidence about the conflict
20 because, you know, you raised that in the opening -- my
21 opening statement. You said, well, is there a conflict
22 about taking positions adverse to Mr. Jones or PQPR. But I
23 think the Court's ruling was really about a predisposition,
24 not a conflict. And so either way there, Judge, I still
25 think it stands as far as not being a focus of the hearing.

1 THE COURT: Okay.

2 MR. SHANNON: So that's the Rule 59 motion.

3 There's also the administrative expense motion, which seeks
4 different relief. And in particular, it seeks retroactive
5 approval for the employment on a limited basis and then
6 compensation and an administrative expense. And that
7 limited basis is both limited in time as well as in the
8 scope. So limited in time would be under 327(a). Limited
9 in scope would be under 327(e). But again, the Rule 59
10 motion is what we are here on today.

11 THE COURT: So can you tell me about the 327(e)
12 argument? If it's the Debtor's application -- I just want
13 to -- procedurally how would that -- I would grant the
14 rehearing and then -- or I would just say you don't get
15 under (a), you then go under (e)? Then does the Debtor get
16 a do-over? I -- how does it work? Do I have authority to
17 force a Debtor to retain a professional under a different
18 code that they didn't ask me to?

19 MR. SHANNON: Well, I do think that's really about
20 the administrative expense motion. But we did talk about it
21 in the Rule 59 motion.

22 So I think that the point is in the application to
23 employ, in the actual basis for the relief, it just says --
24 it just said 327. Now, the arguments that were presented
25 dealt with 327(a). But that's the broader of the two

1 categories. I mean, no one who qualifies under 327(a) who
2 is an attorney who represented the Debtor before wouldn't
3 qualify under 327(e). Right? Because it requires more to
4 be employed under 327(a).

5 THE COURT: And so you think that a lawyer who
6 represents the Debtor in connection with the bankruptcy case
7 can be authorized under 327(e)?

8 MR. SHANNON: For -- yeah, if it's appropriately
9 limited, Judge. And I do think that --

10 THE COURT: Let's just say it's in connection with
11 first day relief. Let's just say it's in connection with --
12 do you think the Code says 327(a), we can put that aside and
13 just hire someone under 327(e) and the special purpose would
14 be the actual bankruptcy case itself?

15 MR. SHANNON: There is a case that says that. I
16 believe it's Stapleton. I don't have that case in front of
17 me as we talk about it in the administrative expense motion.

18 THE COURT: Okay.

19 MR. SHANNON: But yeah, if it's appropriately
20 limited, yes. I think in that Stapleton case -- I believe
21 it's a Delaware case. I don't remember if it was bankruptcy
22 or the district court. But they said if it's for a limited
23 aspect in the bankruptcy case, yes. And I believe in that
24 case, it was related to cash collateral. Typically you'll
25 see it through with respect to sale motions, sales and

1 liquidation of certain assets.

2 THE COURT: I just want you to -- so we're all
3 clear, 327(e) says, trustee of the debtor can, with the
4 court's approval, employ for a specified special purpose
5 other than to represent the debtor in connection -- in
6 conducting the case.

7 MR. SHANNON: Right. And it's what conducting the
8 case has been interpreted by courts. I mean, they say that
9 it's about --

10 THE COURT: You don't think showing up at first
11 day hearings, working on cash collateral orders, seeking to
12 employ professionals, working with the Debtor, that's not
13 conducting the case?

14 MR. SHANNON: Well, I'm not sure --

15 THE COURT: Putting aside whether I can just --
16 whether the lawyer can ask for a different treatment under
17 327 than the movant did at this stage. Putting that aside.
18 And I know that certainly the issue can be taken up in
19 connection with the (indiscernible) motion as well. It gets
20 tricky, don't you think?

21 MR. SHANNON: Well, in the actual application
22 though, there were specific things that were Shannon & Lee's
23 primary responsibility.

24 THE COURT: Right.

25 MR. SHANNON: They were administrative type

1 matters and they --

2 THE COURT: In other words, that the Debtor is the
3 one that asked for retention under 327 and he would
4 represent the debtor and the estate, right? That's what the
5 request was. So you're saying that that was an (a) and (e)
6 application?

7 MR. SHANNON: You know, look, I don't think the
8 application specified. But I do think that the application
9 was seeking employment under 327(a). But I do also think
10 that the primary responsibilities that were indicated would
11 be appropriate under 327(e).

12 THE COURT: Okay.

13 MR. SHANNON: And I also think that they were
14 particularly focused from the beginning of the case, the
15 first month, you know, moving for relief from stay sua
16 sponte by the debtor with respect to some of the Texas
17 litigation, working with the Connecticut plaintiffs to get
18 to an agreed order for relief from stay that would not
19 destroy the Debtor's business and still allow that
20 litigation to go forward.

21 I do think that those kinds of things, they're
22 limited enough that they do fall under 327(e). And the
23 cases that talk about what conducting the case for 327(e)
24 means, they say it's about, you know, preparing the plan,
25 right? Objecting to claims, those kind of core bankruptcy

1 matters.

2 THE COURT: Okay.

3 MR. SHANNON: So anyway, the motion that we're
4 here on today, Judge, the Rule 59 motion, is seeking relief
5 under Rule 59(a). Rule 59(a)(1)(B) of the Federal Rules F
6 Civil Procedure says the court may on motion grant a new
7 trial on all or some of the issues and to any party after a
8 nonjury trial for any reason for which a hearing is
9 heretofore been granted in a suit in equity. Rule 59(a)(2)
10 talks about what the court can do after that. It can open
11 the judgement if one has been entered, take additional
12 testimony, amend findings of fact and conclusions of law or
13 make new ones and direct the entry of a new judgment.

14 So I think that's what the real inquiry is here,
15 Judge. I mean, is this a situation in which a rehearing has
16 been granted before in a nonjury trial?

17 The Fifth Circuit said in Conway v. Chemical
18 Leaman Tank Lines, it's well settled that Rule 59(a)
19 provides a means of relief in cases in which a party has
20 been unfairly made the victim of surprise. That surprise
21 must have caused prejudice. And if it did cause prejudice,
22 the kind of reasoning is that the hearing was inconsistent
23 with substantial justice. Other courts have recognized that
24 basis.

25 Burdyn v. Old Forge Borough, it's a 2019 case

1 citing several circuit court opinions, described it this
2 way. Surprised during trial by a major variance in theory
3 of recovery or defense undisclosed until after the trial is
4 underway is a long-established ground for granting a new
5 trial motion.

6 And the Fifth Circuit has also provided some
7 insight to what that means in a contested matter in a
8 bankruptcy case. The case is In re DDS Materials Inc. The
9 Fifth Circuit indicated that the question is whether the
10 focus of the hearing was evident to the movant prior to the
11 hearing. That's -- I mean, that's what the Fifth Circuit
12 says applies in this kind of situation.

13 I think, Judge, that all the indications prior to
14 the September 20 hearing were that the only issue in
15 controversy with respect to the Shannon & Lee employment
16 application was Mr. Lee's decision not to supplement his
17 disclosures for (indiscernible) PLLC in the IW cases.
18 That's what the U.S. Trustee's objection raised, that single
19 issue. It didn't argue that this created an adverse
20 interest, but rather that the Court should exercise its
21 discretion to deny the S&L employment application anyway.

22 And again, this is where Bankruptcy Local Rule
23 9013-1(g) comes into play. Again, it makes Federal Rule of
24 Civil Procedure 8 applicable. And under Federal Rule of
25 Civil Procedure 8, a party must respond to the substance of

1 a pleading and deny factual allegations where they are
2 deemed admitted.

3 I think that sole basis was consistent with the
4 conversations that I had with the U.S. Trustee before -- or
5 after they filed the objection. I think it's consistent
6 with what was said at the September 13th hearing at which
7 the September 20 hearing was scheduled.

8 At that September 13th hearing, the parties
9 represented that the only issue with respect to the Shannon
10 & Lee employment application was Mr. Lee not supplementing
11 his disclosures.

12 The Plaintiffs filed a joinder after that
13 representation on September 15th, and they didn't add any
14 basis -- you know, any additional basis to that objection.
15 And that's what was, you know, addressed in the Debtor's
16 reply to the Shannon & Lee application at Docket 166.

17 I think that was also kind of supported with what
18 happened at the September 20th hearing. You know, the
19 opening statements, the parties indicated that was the only
20 issue, was Mr. Lee not supplementing his disclosures in the
21 IW cases.

22 And I think when the Court brought up the
23 particular issue of disinterestedness for any other reason
24 kind of based on a predisposition, I mean, it was really
25 after the evidence had already closed. And I think you were

1 right about that, Judge, when you said that none of the
2 parties have presented any arguments about this. And what I
3 submit is that the reason why none of the parties present
4 any arguments about that was because the focus of the
5 hearing and the Court's ruling was not evident to any of the
6 parties beforehand.

7 THE COURT: But why isn't the focus of the hearing
8 the statute, right? Why isn't it the law? The Debtor wants
9 to retain under 327(a), here are the standards under 327(a)
10 (indiscernible) not the focus of the hearing. Why does it
11 matter if anyone showed up to talk about it? Why isn't --
12 if the burden is on the movant to satisfy the initial burden
13 of proof, why isn't the burden on the movant to satisfy the
14 statute? Why isn't the law the focus of the hearing? Why
15 does it need to be what the United States Trustee did or
16 didn't do in this case? It seems like you only have to have
17 hearings on the things that people mention. And I got it,
18 that helps you focus and prepare. But everybody knew that
19 disinterestedness was on the table. Right? Matter of fact,
20 I'm sure the application filed something saying that they
21 were disinterested, right? And so it's not like
22 disinterested was a surprise.

23 MR. SHANNON: Well, I think when you look at what
24 DDS Materials said though, it's about whether the focus of
25 the hearing was evident. And I'm not saying that you're

1 wrong, Judge, in that, well, if disinterested is something
2 that you noted, the Court notices, that you have to grant
3 the motion. But what I'm saying is that if it's not
4 evident, then the parties should have an opportunity to
5 present their evidence and arguments on that issue that was
6 not previously evident.

7 THE COURT: The parties presented at the hearing,
8 for example, that in the last -- in the Info W cases, right,
9 there was a -- folks stood up in front of me and said we're
10 trying to do everything we can and we're exercising our
11 fiduciary duty. And then they get a phone call after the
12 hearing that says, hey, we're going to have a meeting.
13 Folks are working on first day declarations for another case
14 in which they're supposed to be on the other side of it.
15 Right? And during the case, it's me who is finding things
16 in cash collateral orders. Oh, by the way, Your Honor,
17 we're going to pay for all of Mr. (indiscernible) travel
18 expenses in connection with the Connecticut trial during the
19 case. Right? That's a surprise, that disinterestedness was
20 on the table?

21 MR. SHANNON: Well, before the hearing, yes. And
22 I think --

23 THE COURT: I'm sorry, but who submitted the
24 evidence showing time records?

25 MR. SHANNON: Well, Judge, I think, for example,

1 the issue with the cash collateral order, Shannon & Lee
2 didn't work on that cash collateral order. We certainly
3 didn't make the decision of what goes in there. Right? And
4 we need to -- and if it's not raised, how do we present
5 evidence that we weren't. Right? I mean, if it's not
6 something that says, hey, this is something that you should
7 consider --

8 THE COURT: Why not just say, hey, I didn't work
9 on it?

10 MR. SHANNON: Because, Judge, it wasn't raised by
11 any party. I don't think it was raised by the court either
12 until the ruling.

13 THE COURT: Let's talk about other matters that
14 were going on during the case. Are you telling me that --
15 have you ever taken a position contrary, Mr. Lee? Yeah.
16 Okay, give me an example. Those were your questions. Look
17 at the answer he gave.

18 MR. SHANNON: Right. And, Judge --

19 THE COURT: He gave an answer. I didn't ask him
20 that question, you did. Right?

21 MR. SHANNON: Judge, that was after --

22 THE COURT: And he gave an answer. But he gave an
23 answer. If it was wrong, the answer was wrong, I found
24 those issue. Right? And he said I guess I need to correct
25 myself, something to that effect, right? Tell me

1 (indiscernible) adverse interest to the estate, right?

2 Okay.

3 MR. SHANNON: I mean, two things, Judge. One, it
4 was in particular in response to your inquiry that you
5 raised at the beginning of the hearing, which is about a
6 conflict. But two, I think that what he said was actually -
7 - well, the first one that he mentioned was rejecting Alex
8 Jones' request to extend the stay. When he talked about
9 what was presented to the court, you know, yeah, what was
10 presented to the court with respect to the state court
11 attorneys and who was going to pay, the division of payment,
12 what that was, I do believe the additional evidence will
13 show that, look, Shannon & Lee, both me and Mr. Lee
14 originally did not propose for the Debtor to pay 100
15 percent. Now, after negotiations, that's where it got. And
16 that is what was submitted to the Court. But that was after
17 negotiations.

18 THE COURT: What's his answer? That he did that,
19 right? That was Mr. Lee's answer, right? That he opposed
20 that relief. That was his answer on the record, right?

21 MR. SHANNON: With --

22 THE COURT: We can pull up the transcript and we
23 can look at it.

24 MR. SHANNON: Yeah, I think -- I mean, I would
25 have to take a look at the transcript, Judge.

1 THE COURT: What else have you got? I'm not
2 saying that's the only other reason, right?

3 MR. SHANNON: Judge, I believe there is a way for
4 me to pull it up here, but...

5 THE COURT: I'm going to pull it up and look at it
6 together.

7 All right. "Has the Debtor, Free Speech System,
8 in this bankruptcy case ever taken any position contrary to
9 Alex Jones?"

10 "Yes."

11 "And could you describe of them?"

12 "In this Bankruptcy case as an example?"

13 "Yes."

14 "We've taken lots of positions. One,
15 (indiscernible) to the automatic stay. We've told him we
16 can't do that. Number two, he asked us to bear a hundred
17 percent of the cost of all these things, including legal in
18 connection with these lawsuits. We told him we're not going
19 to do that, and we (indiscernible) on that."

20 And I say, "Mr. Lee, a state court litigation,
21 isn't that what FSS originally filed, was a request to pay
22 for a hundred percent of legal fees for the two counsel that
23 are in the state court litigation?"

24 "We did, Your Honor. And then once you told us we
25 couldn't do that, when we filed the retention pleadings for

1 Mr. Martin, the appellate lawyer, we already told him we
2 couldn't bear fifty-fifty."

3 And I say, "What I'm saying is that you said you
4 went against Mr. Jones on that. That was at the request of
5 the United States Trustee and the court and said they
6 weren't going to approve without paying their fair share.
7 How did Shannon & Lee take a contrary position? The
8 application was filed requesting a hundred percent of the
9 fees on an emergency basis."

10 "Yes, Your Honor. That's correct. We filed an
11 emergency basis saying to bear the hundred percent. And
12 then a negotiation subsequently occurred. And you're right.
13 I need to correct my testimony."

14 That's what I'm referring to.

15 MR. SHANNON: Right.

16 THE COURT: That's a surprise?

17 MR. SHANNON: Yeah, well, you know, for example,
18 Judge, I think when you look at the emails, without knowing
19 that that was going to be an issue, the emails show that we
20 originally said that Alex Jones should be paying a
21 proportionate share.

22 THE COURT: Got it.

23 MR. SHANNON: I don't know if I can --

24 THE COURT: I'm going to make you the presenter
25 again. Hold on one second. I apologize.

1 MR. SHANNON: And so while it was the case that
2 what was filed with the court was a hundred percent --

3 THE COURT: Sorry. There we go.

4 MR. SHANNON: While that was what was filed with
5 the Court, and that was in response to the Court's question,
6 that wasn't what was -- there wasn't the opportunity to
7 really present the background emails about that issue.

8 And so again, Your Honor, I would also say that
9 really what surprise means in a bankruptcy contested matter
10 is whether the focus was evident. Again, that's from In re
11 DDS Materials. And I'll also say, Judge, you really
12 shouldn't lose sight of the fact that, you know, the parties
13 that didn't raise the issue are the parties that received
14 discovery about the prepetition negotiations with PQPR.
15 They are the parties that have a financial interest in this
16 issue. And I can only assume that they did their job and
17 looked at it.

18 So that's the evidence focus aspect of it. But
19 then there also needs to be prejudice. And I would say,
20 Judge, that I think the Court's ruling on an issue that
21 hadn't been raised before definitely did cause prejudice.
22 Again, it was a reference to the catchall provision relating
23 to an interest adverse to the estate "for any other reason".
24 And seemingly based on a predisposition under circumstances
25 that render the predisposition and interest adverse to the

1 Debtor's estate.

2 Judge, I just think that's inherently something
3 that needs to be raised and articulated in order to present
4 contrary evidence and arguments about it.

5 Again, with respect to the cash collateral order
6 that had the \$80,000 of travel expenses, I mean, without
7 that being raised as an issue and that predisposition being
8 raised as an issue, I mean, why would we -- why would
9 someone then prepare and present -- what was the background
10 behind that, right? I mean, I'll tell you the background
11 behind it was a way to actually get in agreement with the
12 Connecticut plaintiffs and to avoid a lift stay fight.

13 And that calls prejudice because Shannon & Lee was
14 not able to prepare and present evidence about the purported
15 predisposition. If you really think about the evidence that
16 was in the record submitted for another purpose and point
17 the Court to that evidence or really argue the correct
18 application of the law on that particular issue.

19 I also think that Shannon & Lee was particularly
20 hamstrung because it required going into confidential
21 information, but there was no allegation to respond to or
22 reason to believe it was necessary, which would make it
23 appropriate under Texas Disciplinary Rule of Professional
24 Conduct 105.

25 And I do think it's important, Judge, that even if

1 none of this would change your mind, I think it still
2 matters for the record on appeal. And Rule 59(a) based on
3 surprise is about ensuring a full and fair opportunity to
4 present evidence and arguments.

5 Again, I don't think we need to really go through
6 what all the additional evidence is, but I do think there's
7 substantial evidence that Shannon & Lee can now submit,
8 consistent with Rule 105 of the Texas Disciplinary Rules.
9 Exhibits 13 through 26 are demonstrative of this. There
10 will be some testimony about that documentary evidence,
11 possibly some other documents as well. This is some of the
12 additional evidence with respect to Alex Jones. And the
13 same thing with PQPR.

14 You know, frankly, I think the evidence would show
15 that if anything, Shannon & Lee's initial reaction about
16 PQPR's asserted lien and note was about as skeptical as
17 possible. And I think that's what the issue of
18 predisposition means. But the concerns that the court
19 raised, I mean, Shannon & Lee are attorneys. We don't get
20 to make the decision of whether to bring an action.

21 I also think another aspect of the prejudice is
22 the evidence that was already admitted, but that was
23 submitted for another purpose. For example, I mean, there
24 are the actions that Mr. Lee took to ensure that Alex Jones
25 would not have any control over the Debtor, and that was

1 reflected in the revisions to Mr. Schwartz's engagement
2 letter. And that was admitted at the September 20th
3 hearing. But just kind of the way the issue was raised --
4 and that wasn't on anyone's mind that, well, that reflects
5 predisposition. It was introduced to show when Mr. Schwartz
6 sent his engagement letter to the Debtor.

7 Again, same thing with respect to PQPR. For
8 example, the U.S. Trustee introduced the Debtor's Schedule D
9 where the Debtor, and represented by Shannon & Lee,
10 indicated that PQPR's asserted claim was listed as disputed.
11 And, Judge, you know that what that ultimately means is that
12 PQPR has to file a proof of claim. It's typically not going
13 to be an allowed claim until the Court enters an order
14 saying so. Again, just something that was in the record but
15 wasn't identified as addressing that issue.

16 And lastly as far as the evidence goes -- and I
17 don't think this would have been admitted at the September
18 20th hearing, but there is evidence that's appropriate for
19 judicial notice that indicates that there was something else
20 going on here. And the Court essentially gets the benefit
21 of an experiment, right? They get a new CRO in place,
22 remove the co-counsel, and direct the Subchapter V trustee
23 to conduct an investigation as soon as practicable. And I
24 think a lot of points that the Court has referenced in its
25 ruling are kind of called into question with the outcome of

1 that experiment. I mean, Judge, I believe you referenced
2 that the Debtor had not brought an action against PQPR, and
3 it still hasn't.

4 And the Subchapter IV trustee is still
5 investigating. Because it's a complicated issue. I'm not
6 saying that the Subchapter V trustee isn't doing her job,
7 it's that it's a complicated issue. And again, because
8 those things weren't raised, they weren't discussed at the
9 hearing. And I just think there's some -- the evidence
10 that's appropriate for judicial notice kind of really points
11 out that there's something else going on.

12 The last element of prejudice is the ability to
13 present legal arguments. But, you know, for example, what
14 constitutes an adverse interest, and particularly with
15 respect to the predisposition. You know, whether Shannon &
16 Lee's employment could be approved under Section 327(e).
17 And if Mr. Lee was wrong about his duty to supplement his
18 disclosures in the IW cases, it does not indicate that the -
19 - he has an interest adverse to the Debtor's estate. And
20 again, Judge, it's not, at least from my point of view, it
21 doesn't matter if it really will convince the court that the
22 record should reflect that.

23 Also, Judge, I think that you say, well, does the
24 party have to raise everything. I mean, I think you get
25 things like when we try to address arguments that weren't

1 made, like the reply to the administrative expense motion,
2 right, where you have to address arguments that weren't
3 made, it just kind of spirals out of control. And that's
4 very expensive, and I think that's why Bankruptcy Local Rule
5 9013(g) is important.

6 THE COURT: I agree with that. But isn't there a
7 difference between that and saying the Fifth Circuit issued
8 a decision in West Delta Oil in 2005 that talks about
9 standards under 327? Isn't that a little different than
10 saying, you know, there is a case that's been out there for
11 the last, I don't know, 17 years at the time or 18 - you
12 know, 17 years at the time.

13 MR. SHANNON: For example, in West Delta Oil
14 though, Judge, I mean, the court there said there was a
15 predisposition. But --

16 THE COURT: I'm just saying the standard, right?
17 I'm talking about the case says what it says, yet you don't
18 have to respond. You don't have to make up arguments to
19 respond to that. But shouldn't parties have to at least say
20 I know what this means under the Code and the Fifth Circuit
21 has ruled on it and I think I satisfy it under 327?

22 MR. SHANNON: Well, but I think particularly when
23 you talk about a predisposition though, Judge -- for
24 example, again, just actually looking at what the facts were
25 there. I mean, the facts -- what the Fifth Circuit said was

1 a predisposition was attempting to buy assets from the
2 estate, an attorney attempting to buy assets from the
3 estate. That's a pretty clear case. I think when you get
4 to things that are unarticulated and kind of fuzzy, I think
5 it does require more than that. I mean, I do think that if
6 Shannon & Lee was trying to buy assets from the Debtor, I
7 think that would be a pretty obvious thing that we should
8 recognize.

9 THE COURT: So let's just say hypothetically there
10 was a lawyer representing to the court in a prior case that
11 it was working opposite to -- on the opposite side of a
12 deal, but was actually meeting with the opposite side
13 preparing first day declarations and then assisting the
14 owner of that company in connection with trial on a personal
15 matter, participating in jury selection, related issues or
16 in connection with the personal trial. And then the second
17 entity that they were supposedly on the opposite side of the
18 deal, that entity actually files. And then things start to
19 show up in the case where it starts to get a little
20 uncomfortable between -- everybody knows there could be
21 potential issues between the debtor and the owner. I'm not
22 saying there are, but there are potential issues. You're
23 saying that that's all a surprise, right? Like, man, I had
24 no idea that someone could ask whether there was a
25 predisposition towards rendering (indiscernible) where, you

1 know, 20 days before the case, I was drafting first day
2 declarations and helping someone out on personal matters.

3 MR. SHANNON: Well, Judge, two things. I do
4 believe the personal matter thing -- I mean, the U.S. --

5 THE COURT: No, no. I'm just saying -- I'm not
6 saying it's there. I'm just saying it's -- I think it's a
7 little -- I guess what I'm saying is, isn't this case a
8 little different than the debtor files a Chapter 11 case, I
9 don't know anything about this case, the debtor, a new
10 debtor, application filed 14 days into the case. And all of
11 the sudden non one raises the issue. And then all of the
12 sudden someone says I think you're disinterested. Right?
13 Isn't that a little different than evidence in the record
14 showing watch this timeline, watch this timeline. Now we're
15 in a new case, lack of disclosure here, lack of transparency
16 here. Look at what happened in between the two. And then
17 during the case, look at where things are going. Right?
18 Doesn't the Court have discretion to determine, like, are
19 you -- you know, are you free of all bias and interest
20 potentially, or is it better for the estate to have a
21 representative that doesn't have to deal with any of these
22 issues?

23 MR. SHANNON: Well, a couple of things, Judge.
24 One, I think the particular factual things you brought up, I
25 don't know that I necessarily agree with them. And I think

1 that's the things that the evidence would show.

2 THE COURT: You disagree that Shannon & Lee was
3 working on a first day declaration for FSS?

4 MR. SHANNON: Well, no, no. I agree that Shannon
5 & Lee did that at some point.

6 THE COURT: I know. You disagree that Mr. Lee was
7 working on -- billed time for a jury focus group?

8 MR. SHANNON: Well, but so --

9 THE COURT: I'm just asking you. I'm just asking
10 you. Are you disagreeing that there is a time entry saying
11 --

12 MR. SHANNON: I agree that there's a time entry.
13 But for --

14 THE COURT: That's all I'm saying.

15 MR. SHANNON: Right. But what I'm saying is,
16 Judge, that look, you say that, well, it's jury selection
17 for Alex Jones. But, Judge, there was a default alter ego
18 finding in that case.

19 THE COURT: I'm just asking.

20 MR. SHANNON: Right. And I think that the
21 additional evidence though is saying, well, look at this
22 default alter ego finding. It wasn't about Alex Jones. It
23 was about there was a default alter ego finding. A finding
24 against Alex Jones is a finding against FSS. That's why it
25 mattered. And that has to really --

1 THE COURT: But the evidence was admitted into the
2 record, right? And once the evidence was admitted into the
3 record, the Court asked a question about the evidence
4 admitted into the record. You're saying that's a surprise?
5 I asked the question. I asked -- on Page 66 of the record,
6 on Page 1. "You attended a focus group hosted by someone in
7 participating on a jury selection of Alex Jones. That was
8 work for FSS?"

9 He says, "Yes, Your Honor."

10 So (indiscernible) I can't ask questions about
11 evidence -- and that's a surprise? You need a do-over on
12 that?

13 MR. SHANNON: Judge, I'm not saying you can't ask
14 questions. I'm saying that --

15 THE COURT: But you need a do-over because the
16 evidence that you submitted and your time records the court
17 asks a question about and you're not prepared for it, and
18 that's why you want another hearing on it?

19 MR. SHANNON: Judge, I mean, that's what In re DDS
20 says. I mean, I do think that the evidence at the actual
21 hearing was that that was for FSS.

22 THE COURT: I'm not saying it's not. I'm not
23 saying it's not. I'm just saying -- it's like everybody's
24 acting like there was a surprise. I shouldn't ask questions
25 without documents admitted into the record, I should only

1 ask questions based on the evidence that I'm seeing at the
2 time that the hearing is there. I shouldn't prejudge
3 evidence. Once there is -- once there are documents, I
4 asked questions to make sure that I got comfortable with
5 what I understood. So ask questions --

6 MR. SHANNON: And what I'm saying, Judge, is that
7 it does cause prejudice when we don't have the opportunity
8 to respond to that --

9 THE COURT: The witness was on the stand. How
10 long has Mr. Lee been practicing? Over -- far longer than I
11 have. Are you telling me that he needs a do-over for a
12 question on a time record that he submitted?

13 MR. SHANNON: I think there's additional evidence
14 that the Court should consider. You know, if what matters
15 is about transparency and about focusing on what the truth
16 is and what's important is getting a full indication of the
17 issues, then yeah. And it's not a do-over, right? It's
18 about presenting the full evidence.

19 THE COURT: Are you saying he didn't have an
20 opportunity to answer the question when I asked him that?

21 MR. SHANNON: No, he had an opportunity to answer
22 the question, but we did not have an opportunity to present
23 the evidence of the default ruling, the default finding of
24 alter ego.

25 THE COURT: Okay. Okay.

1 MR. SHANNON: And I just want to quickly, Judge --
2 I know we are going long, but --

3 THE COURT: No, no. I want you to take as much
4 time. And the 11:00 will wait.

5 MR. SHANNON: Okay. Talk about the objections and
6 the replies.

7 THE COURT: I've interrupted your -- and I've been
8 -- I need to sit here and I want to listen to what you're
9 saying. I have asked a lot of questions because I want to
10 make sure that I understand the argument. And that in no
11 way impedes on the amount of time that you have. You take
12 as much time as you need.

13 MR. SHANNON: Thank you, Your Honor. I'll talk
14 about some of the -- real quickly the objections. I'll let
15 the other parties make them. But the first one is that both
16 Alex Jones and the U.S. Trustee argue that Shannon & Lee
17 does not have standing or authority to bring the Rule 59
18 motion. Judge, I think that's contrary to both the language
19 in Rule 59(a)(1), which says "and to any party". I think
20 it's also contrary to Bankruptcy Code Section 1109(b). It
21 says a party in interest may raise and be heard on any issue
22 in a case under this chapter. And a party is a party in
23 interest where it has a personal stake. And that can be
24 addressed by favorable decision.

25 Courts have held that a professional can seek

1 relief with respect to a denied application to employ, which
2 really goes more to the standing aspect. But, Judge, I
3 think they have a point to the extent that the Court's
4 ruling at the September 20th hearing doesn't prejudice the
5 administrative expense motion.

6 If the argument is you guys don't have standing,
7 you're not a party in interest because you have another
8 avenue to do that that's better fitting, that works better,
9 they have a point there. And that's kind of why we said
10 that these two should kind of be considered together, why we
11 asked for a continuance of this motion pending the
12 administrative expense motion. Because, you know, Shannon &
13 Lee's primary stake is that administrative expense motion.
14 I don't think it gets everything, but it kind of gets what I
15 care about, anyway. And it's not clear if there's a dispute
16 about this issue. I don't think it's necessarily for today
17 --

18 THE COURT: I'm sorry, what is it that you care
19 about?

20 MR. SHANNON: The administrative expense request,
21 right? And whether there is prejudice that prevents seeking
22 the employment on a limited basis.

23 Again, I'm not sure there's a dispute on this.
24 Only the U.S. Trustee objects to both the Rule 59 motion and
25 the administrative expense motion. But -- and also no one

1 who objects to the administrative expense motion directly
2 says, look, you're not able to seek retroactive approval of
3 the employment, or really even argues against it. So I do
4 think that if the Court denies the Rule 59 motion, I think
5 that should be the basis. You know? And that would make
6 sense. I mean, it hasn't been really what the parties have
7 said yet.

8 THE COURT: What do you mean, that should be the
9 basis? I just want to make sure I understand that
10 statement.

11 MR. SHANNON: Well, that Shannon & Lee doesn't
12 need this relief to get what their real stake is. Right?
13 That a Rule 59 motion, they're not precluded from seeking
14 the administrative expense motion, so this isn't the right
15 way to do it. Which, again, if that is true, that it does
16 not prejudice it, then I can see the argument that Shannon &
17 Lee doesn't have a personal stake. I don't think it gets
18 everything. I think that the KLG Gates LLP v. Brown case
19 says there are other things that give a personal stake. But
20 it certainly gets almost all of it. It gets really what the
21 heart of it is.

22 The U.S. Trustee also argues that the Rule 59
23 motion should be denied because Shannon & Lee has not shown
24 manifest error. Judge, Manifest error is a requirement for
25 motions to alter or amend the judgement under Rule 59(e).

1 59(e) has a different purpose than Rule 59(a). Rule 59(e)
2 is about correcting judicial error based on the existing
3 record. Rule 59(a) based on surprise is about ensuring
4 parties have a fair opportunity to create that record.

5 And also, Judge, I think as we said in the reply
6 at Note 7, I do think there was manifest error on some
7 points. You know, for example, that Mr. Lee said, okay,
8 we're definitely going to go and negotiate against FSS and
9 Alex Jones and try to get a new plan support agreement. I
10 mean, what he actually said at the end of the hearing was
11 we're going to make a decision quickly whether to do that or
12 to dismiss the case.

13 There were some other ones. I don't think we need
14 to go through them all. They're in the briefing. Put
15 better in the briefing than I think I could right now.

16 The other objection is from the U.S. Trustee that
17 the evidence that Shannon & Lee seeks to introduce is
18 cumulative. Again, Judge, that's an issue for motion
19 seeking a rehearing for newly-discovered evidence. I also
20 just don't think that the evidence is merely cumulative
21 because cumulative evidence is evidence that only
22 corroborates, strengthens, or confirms other evidence. And
23 that's not really all the additional evidence would do. I
24 mean, just one example would be -- really go to the initial
25 reactions of Shannon & Lee to provide evidence of a

1 predisposition.

2 The last objection, kinds of arguments in the
3 objections, is by Alex Jones saying that some of the
4 evidence that Shannon & Lee seeks to introduce would be
5 subject to common interest privilege. Judge, I really think
6 that's an issue for a rehearing. But, you know, we disagree
7 with that. But again, it's an issue for a rehearing.

8 So in conclusion, Judge, I just really think that
9 there are three main considerations that the Court should
10 keep in mind. You know, was the basis of the Court's ruling
11 the evident focus of the September 20th hearing prior to
12 that hearing? And again, I do think it's important that
13 it's prior to that hearing and if throughout the hearing it
14 became evident, I do think that's different. And
15 essentially that question is was there surprise. I just
16 think that the fact that the U.S. Trustee's objection raised
17 a different issue, you know, the allegations were deemed
18 admitted under Bankruptcy Local Rule 9013(g) that, Your
19 Honor, the representations at the September 13th hearing,
20 what the Sandy Hook plaintiffs said in their joinder, what
21 the parties said at the beginning of the September 20th
22 hearing, and what the Court itself noted after the closing,
23 that no one really talked about the Fifth Circuit standards
24 in any of the briefing or in their arguments.

25 So, again, essentially was there a surprise, I

1 think the answer is yes, based on what the Fifth Circuit
2 indicates that matters.

3 You know, two, did Shannon & Lee have a full and
4 fair opportunity to prepare and present evidence about the -
5 - evidence and arguments about whether it had a
6 predisposition under circumstances that made that
7 predisposition adverse to the estate. Essentially was there
8 prejudice.

9 Again, Judge, I think the answer is yes, there was
10 prejudice. I think that an adverse interest for any other
11 reason based on a predisposition is inherently something
12 that you need to know what you're arguing against. The
13 issue was put into controversy for the first time after the
14 hearing started. And under Rule 105 of the Texas
15 Disciplinary Rules, Shannon & Lee's ability to present
16 confidential information was limited.

17 And the last consideration, Judge, is what outcome
18 creates a full record. You know, there's been a lot of talk
19 about transparency. And I think that granting rehearing and
20 presenting this evidence is what does provide transparency.
21 So based on that, Judge, I think the Court should either
22 grant the Rule 59 motion, set a rehearing, or deny the
23 motion because it's unnecessary. Because there's nothing in
24 your ruling that actually prevented Shannon & Lee from
25 seeking, you know, their interest and their personal stake

1 that makes them a party in interest with respect to this
2 issue. And, Your Honor, absent I think what the Court's
3 particular ruling was, I think that granting a Rule 59
4 motion would be required. But based on what the Court's
5 ruling actually was, well maybe not. Right?

6 And I'll say that when I read the U.S. Trustee's
7 objection, I kind of thought about it and I said, well, you
8 know what? They could have a point if these other certain
9 things. And also, Judge, holding a further hearing is
10 consistent with the way that courts in this district have
11 kind of dealt with issues that have been raised by the Court
12 but not addressed in the parties' briefing or the focus of
13 the hearing. Again, the LTHM Houston Operations case
14 referenced in the Court's ruling indicates that. And either
15 way, Judge, I think we just need to get a hearing set on the
16 remaining issues. And I just think there are less legal
17 issues if the Court grants the Rule 59 motion. But if not,
18 I still think we need a hearing.

19 THE COURT: Thank you.

20 MR. SHANNON: Thank you, Judge.

21 THE COURT: Okay. Mr. Ridulfo?

22 MR. RIDULFO: Again, Your Honor, Mike Ridulfo for
23 Marc Schwartz.

24 THE COURT: Mr. Ridulfo, before you begin, I want
25 to make sure, do you have -- are you going to need the

1 presenter role? Are you going to make arguments? I want to
2 make sure that I...

3 MR. RIDULFO: I am going to make arguments, but
4 I'm not going to retread over the ground that --

5 THE COURT: No, I mean in terms of making
6 presentations. We're using this -- okay, perfect. No, I
7 just wanted to make sure. If you were going to do it, I
8 didn't want to ruin your flow.

9 MR. RIDULFO: Thank you, Your Honor. Just as a
10 preliminary matter, Your Honor, we had submitted exhibits
11 prior to this hearing. I'm trying not to confuse the
12 record.

13 THE COURT: Okay.

14 MR. RIDULFO: Mr. Shannon asked for the admission
15 of 1 through 12. And did I understand that those had been
16 admitted?

17 THE COURT: For the purposes of this hearing,
18 yeah.

19 MR. RIDULFO: Okay. Our Exhibits 1 through 11
20 fall into that same category. They're the same.

21 THE COURT: I think they can be admitted for the
22 same. If we could just say that Shannon & Lee 1 through 11
23 will apply to --

24 MR. RIDULFO: Yes, except that --

25 THE COURT: Or do you want your 1 through 11 in

1 there?

2 MR. RIDULFO: No, it's our first three are
3 Exhibits 1, 2, and 3. So, for example, Shannon & Lee's
4 Exhibit 2 is Shannon & Lee's application to employ.

5 THE COURT: Got it, got it.

6 MR. RIDULFO: Our Exhibit 2 is Schwartz's
7 application to employ.

8 THE COURT: Why don't we just keep it separate?

9 MR. RIDULFO: Okay. And so we would ask for the
10 admission of Schwartz's Exhibits 1 through 11.

11 THE COURT: Okay. Give a second. And that is at
12 Docket Number 386 it looks like.

13 MR. RIDULFO: 393. We filed a corrected list
14 yesterday, Your Honor.

15 THE COURT: Oh, got it. Okay. Got it. And you
16 said 1 through 11?

17 MR. RIDULFO: Yes, sir.

18 THE COURT: All right. Let me just take a quick
19 look. Okay. I'm going to admit 1 through 11 for purposes
20 of this hearing with the same stipulation that this is a
21 motion for a rehearing, so we're not opening up the prior
22 record. This is simply allowing parties to make arguments
23 in support of the request for rehearing. You know, let's
24 just call it 393, 1 through 11 are admitted for that
25 purpose. Thank you.

1 MR. RIDULFO: Your Honor, as I just mentioned, Mr.
2 Shannon went through his presentation. I'm not going to
3 repeat everything he said. I would ask the Court to just
4 allow me to incorporate that presentation as it relates to
5 Mr. Schwartz.

6 THE COURT: So done.

7 MR. RIDULFO: The background information is the
8 same, the arguments with respect to Rule 59. The only issue
9 that we don't have in common is the 327(e) issue. I'm sure
10 the Court's aware of that. And subject to that, we adopt
11 the arguments made by Mr. Shannon with respect to the
12 presentation.

13 THE COURT: Okay.

14 MR. RIDULFO: Your Honor, I'm here in a little
15 different spot because I wasn't at the September 20th
16 hearing. I'm here to try to protect my client as best I
17 can. And without question, it's a difficult situation.
18 Might I have done things a little different? Maybe. I
19 don't know. I'm not here to Monday morning quarterback it.

20 We have in our Rule 59 motion outlined numerous
21 areas where we would ask the Court to reopen the record for
22 rehearing to allow Mr. Schwartz to present what I think is
23 overwhelming evidence of his disinterestedness. We believe,
24 as Mr. Shannon argued, there was surprise. We believe it
25 was not the focus of the hearing. Mr. Schwartz had what I

1 would call numerous tense and pushback moments with Mr.
2 Jones that he would like to present before Your Honor on the
3 issue of disinterestedness. This includes -- and I'm not
4 going to run through them all -- but as reflected in our
5 Rule 59 motion, issues such as Mr. Jones' alleged
6 entitlement to an indemnity from FSS, which Mr. Schwartz
7 rejected. Mr. Jones' insistence on taking private jets with
8 a security detail to Connecticut, which was also pushed back
9 on by Mr. Schwartz. Also, numerous issues with respect to
10 PQPR, the avoidance of their lien, the validity of their
11 claim. And as it related to Mr. Schwartz also, and less so
12 I think Shannon & Lee, operational issues that dealt with
13 FSS's relationship with PQPR to purchase a product from
14 PQPR, the potential excesses that were associated with that
15 relationship, all of which were the subject of intense
16 negotiations and we submit the evidence would show
17 independent action by Mr. Schwartz.

18 Mr. Schwartz attended the meeting that I think was
19 the flashpoint, the September 20th hearing, on May 24th. He
20 obviously did not participate in any jury selection issues
21 or anything of that nature. His participation should have
22 been disclosed. We don't dispute that. I'm not sure
23 whether that would have been a motion to reopen the IW cases
24 for purposes of disclosure. I'm not sure how that
25 procedurally would have worked. But it is Mr. Schwartz's

1 view that that was the focus of the September 20th hearing
2 and not his decision.

3 And he would just like an opportunity to put his
4 evidence in the record. I don't know that he is here to ask
5 the Court to change its mind, but just to reopen the record
6 to allow him an opportunity to introduce his evidence.
7 Because -- and the Court noted this at the ruling, that this
8 is a very difficult decision. I think the Court said
9 something to the effect that you hope you never had to do
10 that again. Mr. Schwartz feels the same way and
11 understands. And having read it, it's hard to get context
12 sometimes from a transcript, but that came through loud and
13 clear, Your Honor. And Mr. Schwartz wants an opportunity to
14 show the Court that not only is he a disinterested person in
15 this case, but that it's personally an affront to him to
16 have an employment application denied. And he wants the
17 opportunity to present his evidence. And the Court will
18 rule how the Court will Rule. And we would just ask for
19 that opportunity.

20 And subject to that, Your Honor, I will answer any
21 questions the Court may have.

22 THE COURT: No questions. Thank you very much,
23 sir. Okay.

24 Let me just ask, is there any other party who
25 supports the relief requested in either application? This

1 is an opportunity to be heard. If you do wish to speak, I'm
2 going to ask that you please hit five-star. I muted one
3 line. I don't know if that party wishes to make any form of
4 -- ask any questions. Is there anyone else who wishes to be
5 heard in support of the relief? Okay.

6 I'm going to start now with parties who oppose the
7 rehearing. And I'll start in the courtroom. Mr. Ruff, you
8 may proceed. Thank you.

9 MR. RUFF: Thank you, Your Honor. Again, Jayson
10 Ruff with the U.S. Trustee's Office. I will try to keep it
11 concise and to the point, Your Honor. And really the issue
12 is not that complicated. So hopefully that won't be too
13 difficult.

14 First is the issue of standing. The applications
15 sought to be reconsidered were the Debtor's and not Shannon
16 & Lee's or Schwartz's. Indeed, 327(a) by its plain language
17 when read in conjunction with 1107 only authorizes the
18 Debtor subject to Your Honor's approval to employe
19 professional persons. The Debtor put forth the
20 applications. The court denied the applications, and the
21 Debtor is not pursuing the applications any further. The
22 professionals do not have an independent right to continue
23 seeking court authority for their employment.

24 Second, Your Honor, and I'll say this, Mr. Shannon
25 alluded to the fact that, well, it was unclear in the

1 application whether it was under 327(a) or 327(e). I
2 actually think it was quite clear. I read in Paragraph 24
3 of their application when they say the basis for relief, it
4 says subject to the bankruptcy court approval, Bankruptcy
5 Code Section 327(a) authorizes trustees and debtors in
6 possession to employ one or more, and so on and so forth.

7 However, with that being stated, it was unclear
8 whether or not the Rule 59 motion was only under 59(a)
9 and/or 59(e), so we addressed it. And assuming for the sake
10 of argument that the professionals did have standing and
11 authority to seek a rehearing under Rule 59, the
12 professionals have not demonstrated how there is a manifest
13 error of law or mistake or effect by the Court or that there
14 is newly-discovered evidence, nor how any -- excuse me --
15 prejudicial error crept into the record that would entitle
16 them to a rehearing on the denial of the applications. To
17 be successful, the professionals need to be able to show
18 these elements, and they have not.

19 Your Honor, when the Court first heard the
20 applications of Shannon & Lee and Schwartz, we were here
21 from early in the afternoon until well in the evening. And
22 nothing was rushed. All the parties had a full and fair
23 opportunity to present whatever evidence they wanted in
24 support of their respective positions, either for or against
25 the applications. No one was shortchanged.

1 And then lastly, Your Honor, the purported
2 additional evidence that the professionals seek to admit was
3 readily available and could have been raised at the hearing
4 on September 20th. Mr. Lee and Mr. Schwartz, as the Court
5 alluded to, each have multiple decades of experience
6 individually. Not combined, individually. And it's really
7 without credulity to say that they were unaware or surprised
8 that their disinterestedness would be an issue. You know,
9 Mr. Shannon alluded to the fact that we were concerned about
10 the lack of disclosure in the prior cases and whether or not
11 there was a conflict of interest. Well, the conflict is a
12 conflict of interest. That itself ties into
13 disinterestedness, which is what was at issue and really was
14 what was at the heart of the Court's ruling in denying the
15 applications. Looking at the history of the prior case, the
16 in-between period into the new case, and seeing whether or
17 not there was any lack of disinterestedness or not.

18 So to allow them to come in now and reopen the
19 record with fact that were readily -- and evidence for that
20 matter that were readily available to them at that time, the
21 original hearing would be nothing more than giving them a
22 second bite of the apple. It's just not how the system
23 works. It's not how the rules are set up, how the Code is
24 set up. And so we would request that it be denied.

25 Now, a couple of things, Your Honor. And I think

1 Your Honor gets this, but I'll just say it for the record.
2 There's nothing to stop -- 327(a) was the -- 327 was the
3 focus. The Code, the legal authority for a Debtor to employ
4 (indiscernible) was the focus of that hearing. We raised
5 issues, other parties raised some issues, but the focus was
6 they were seeking their employment. To say that
7 disinterestedness somehow and being prepared to prove that
8 should the court raise the issue, that just doesn't --
9 again, it lacks credulity, especially given the experience
10 that these professionals have.

11 Your Honor, they also alluded to the fact that
12 some -- they would have raised it, but some of the
13 information was privileged and confidential. Well, the
14 Debtor holds the privilege. It was the Debtor's
15 application, so the Debtor could have waived that privilege
16 if it wanted to to present that evidence in support of those
17 applications.

18 And then finally, Your Honor, there was also
19 mention that, I believe with respect to Mr. Schwartz, that
20 if he could go back, he would have corrected his disclosures
21 and that maybe they would have had to seek a reopening.
22 Well, they didn't have to seek a reopening if they would
23 have just disclosed at the time that this stuff happened.
24 It was during the Info W cases, Your Honor. So there was
25 really no need to reopen the case. It was really just to

1 disclose at the time that things were happening.

2 So, Your Honor, unless you have any questions for
3 me, I promised you I would be concise. Again, I think the
4 issue is relatively straightforward, and that's what we
5 have.

6 THE COURT: Thank you.

7 Does anyone in the courtroom wish to be heard
8 opposing the relief requested? Okay, I don't see anyone.

9 Mr. Shannon, Mr. Ridulfo, anything else you wish
10 to tell me? Anything in response?

11 MR. SHANNON: Just one quick thing, Judge. I do
12 think it's important to keep in mind what the basis for the
13 adverse interest was, that it was a predisposition, that it
14 was still unarticulated really what the adverse interest of
15 material incentive was to act contrary to the estate. So I
16 do think that's something to consider when deciding whether
17 it was a surprise or not.

18 THE COURT: Thank you.

19 Anything else? All right, folks. Just give me a
20 second to look at something.

21 Okay. All right.

22 So we are here on the applications -- I should say
23 the motions for a rehearing filed by Shannon & Lee and Mr.
24 Marc Schwartz. The Court certainly has jurisdiction to
25 address this. This is certainly a core proceeding under 28

1 U.S.C. 157(b). Here is the Court's ruling.

2 On August 20th, the Debtor filed applications
3 under Section 327(a) of the Bankruptcy Code to employ
4 Schwartz as the Debtor's chief restructuring officer, along
5 with Schwartz's firm as advisors and Shannon & Lee as co-
6 counsel.

7 For the purposes of this decision, I am going to
8 refer to Schwartz and his company as "The Advisor"
9 collectively and Shannon & Lee as "The Firm".

10 The U.S. Trustee objected to both applications, so
11 did the Sandy Hook families. They filed joinders to those
12 applications.

13 On September 20th, the Court conducted an
14 evidentiary hearing to consider the Debtor's applications to
15 employ the Advisor and the Firm. After hearing the
16 evidence, the Court denied both applications for the reasons
17 stated on the record.

18 On October 4th, the Firm and the Advisor filed
19 motions in their individual capacities requesting a
20 rehearing under Federal Rule of Civil Procedure 59 to
21 present additional evidence on the issue of
22 disinterestedness for their applications.

23 The motions are essentially duplicates, I agree
24 with Mr. Ridulfo, other than the additional argument raised
25 in the Firm's rehearing motion on Section 327(e). The

1 evidence would supposedly address items this Court found
2 problematic, but which the Firm and the Advisor didn't
3 address because they were allegedly not either raised before
4 the close of evidence or in the United States Trustee's
5 objection. And I did allude that the alternative argument
6 raised in the Firm's motion is that it should be permitted
7 to present additional evidence to show that employment under
8 Section 327(e) of the Bankruptcy Code may be appropriate
9 under the circumstances. The U.S. Trustee has objected to
10 both of these rehearing motions. The Sandy Hook plaintiffs
11 also filed a joinder to the arguments raised in the U.S.
12 Trustee's objections.

13 Trustee is making three arguments. First, that
14 the professionals don't have the requisite authority seek
15 reconsideration. Trustee notes that the Debtor is the one
16 who filed the applications and the Debtor isn't seeking the
17 rehearing. The Trustee notes that the debtor moved to
18 approve a different CRO. And I'm talking about in his
19 papers. And that employment was authorized by the Court.

20 Second, the Trustee argues that the rehearing
21 motions fail to satisfy the requirements for Federal Rule 59
22 for a new hearing. According to the Trustee, the
23 professionals have not established any manifest error of law
24 or mistake, any newly-discovered evidence, or any
25 prejudicial error that crept into the record that would

1 entitle them to a rehearing.

2 Third, the purported additional evidence the
3 professionals seek was readily available and could have been
4 raised by them at the September 20th hearing.

5 I would note that Mr. Jones also objected to the
6 rehearing motions. Mr. Jones is the owner and the operating
7 member of the Debtor. He stated that the movants filed
8 their motions without any prior consultation with him. He
9 also notes that the Debtor is not a party to the rehearing
10 motions and didn't file a joinder in support of them. And
11 they also raised the issue that any new evidence contains
12 attorney-client and work product privileged communications.

13 (indiscernible) the advisor filed replies arguing
14 that they do have standing in their motions and that the
15 relief sought in the notions is appropriate.

16 They also raised an issue that was raised in their
17 papers, but they also I think -- certainly Mr. Shannon I
18 think gave this Court greater clarity. There's also
19 separate motions for administrative expense filed by these
20 parties. And certainly according to at least Shannon & Lee
21 -- Mr. Ridulfo, I know that you adopted many of the
22 arguments there for the presentation. But to the extent
23 that it applies to Schwartz as well, I'll accept it, that
24 really I could just deny this motion because it's
25 unnecessary. Because they should be able to -- they can

1 proceed under the motion for admin expense. I'm not going
2 to agree with that. If parties file motions requesting
3 rehearing under Federal Rule of Civil Procedure 58 which are
4 incorporated by Rule 9023, I take them incredibly serious.
5 I think professionals take them very seriously. I'm not
6 just going to deny because there's another avenue. I'm
7 going to take up the emotion.

8 I have not considered the motion for
9 administrative expense. Maybe there will be a time that I
10 take them up on one or both professionals, but that's not
11 today. What's before me are two motions for rehearing.
12 They were filed before the motions for admin expense, and
13 I'm going to take them up in the order that they were filed.

14 Certainly Mr. Ridulfo told me Mr. Schwartz is
15 taking the Court's ruling incredibly seriously. So I spent
16 a lot of time preparing for today. I'm not going to just
17 dismiss something, I'm going to take it on the merits. I
18 think the parties deserve it. I think the process deserves
19 this as well.

20 Let's start with the rules. 59(a)(1)(B) is
21 incorporated under Federal Rule of Bankruptcy Procedure
22 9023. 59(a)(1)(B) states that the Court may grant on a
23 motion a new trial on some or all issues and to any party
24 after a nonjury trial for any reason for which a rehearing
25 has been granted in a suit in equity, federal court. Wright

1 & Miller Federal Practice and Procedure, Section 2804, agree
2 with, explains that the concept of a new trial under Rule 59
3 is broad enough to include a rehearing on any matter decided
4 by the Court without a jury. So I do think proceeding under
5 Rule 59(a)(1)(B) and asking for a rehearing is completed by
6 the rule.

7 Rule 59(a)(2) also provides that after a nonjury
8 trial, court can open the judgment if one has been entered
9 and take additional evidence, amend findings of facts and
10 conclusions of law or make new ones and direct the entry of
11 a new judgement. To reinstate a case under 59(a), the court
12 has to consider the entire record and conclude that manifest
13 injustice will result from letting the verdict stand.
14 *Foradori v. Harris*, 523 F.3d 506 (5th Cir. 2008). Courts do
15 not grant relief under Rule 59(a) unless it is reasonably
16 clear that prejudicial error has crept into the record and a
17 substantial injustice has not been done and the burden of
18 showing harmful error rests on the parties seeking a new
19 trial. *Sibley v. Lemaire*, 184 F.3d 481, 487 (5th Cir.
20 1999).

21 Let me start with the standing issue. The movants
22 note that Rule 59(a)(1) provides that the Court may grant a
23 new trial on some or all issues and to any party, and the
24 Bankruptcy Code 1109 provides that a party in interest may
25 raise or be heard on any issue in a case. Movants argue

1 that this qualification itself grants standing.
2 (indiscernible) have standing to seek a rehearing today.
3 What happens after the court would grant rehearing would be
4 another issue on parties' rights. But I do think the
5 movants have the right to come today and ask for another
6 hearing on their applications. But they fail to show why
7 the relief they seek is appropriate under 59(a).

8 Standard for approval of applications is Section
9 327(a), which provides that the Court would -- excuse, me
10 that the Debtor with the court's approval can employ
11 attorneys, accountants, appraisers, or other professional
12 persons -- ad Mr. Schwartz and his firm would qualify as
13 other professional persons -- that don't hold or represent
14 an interest adverse to the estate and that are disinterested
15 to represent or assist the Debtor in carrying out the
16 Debtor's duties under the Bankruptcy Code. The term
17 disinterested is defined in the Bankruptcy Code under
18 Section 101(14)(A) includes -- this was all -- there's no
19 dispute that under the law, the party who files the
20 application under Section 327 has the burden to prove that
21 they satisfy the relevant legal standard in the Bankruptcy
22 Code.

23 In this case, the Firm and the Advisor elected to
24 file inflammatory pleadings attacking the United States
25 Trustee and to present evidence and testimony as it saw fit

1 rather than making their own case under Section 327. Both
2 professionals, who are extremely experienced, are allowed to
3 present their evidence and argue in support of their
4 application. Exhibits were admitted and a senior
5 representative of the Firm and the Advisor testified. They
6 were examined by the attorney of their choosing, to my
7 knowledge.

8 Movants claim surprise about the issues related to
9 disinterestedness because the UST allegedly never raised the
10 issue specifically in their pleadings. But that's part of
11 the legal standard under the statute for which their
12 retention was based on. Movants cannot credibly argue that
13 the issues about the legal standard and caselaw upon which
14 the applications were based as well as the evidence
15 submitted in the record was a surprise.

16 The Court's ruling is based on the evidence
17 properly admitted at the hearing, Section 327(a), and
18 applicable law in this district. Among the reasons I stated
19 in my decision denying the applications was that the Firm's
20 and the Agency's pre and post-petition actions color the
21 independence and impartiality required by the Bankruptcy
22 Code. It wasn't just an appearance of a conflict of
23 interest, I found that the professionals held adverse
24 interest to the estate. And the lack of transparency in the
25 bankruptcy process gave this Court great concern as to

1 whether these professionals could impartially represent the
2 Debtor.

3 The evidence admitted at the hearing on both
4 professionals -- and I'm trying to be nice here -- was
5 extremely troubling. For example, Schwartz and Lee were
6 planning to start to work for this case, FSS, while they
7 were still working for the Info W debtors and telling the
8 Court that they were exploring all options in their
9 fiduciary capacity for the Info W case.

10 Between the Info W case and this case, Mr. Lee was
11 billing FSS for attending focus groups and participating on
12 jury perceptions in a case where Mr. Jones was a separate
13 defendant in the Connecticut and Texas litigation.

14 During this case, FSS sought approvals and relief
15 (indiscernible) applications to employ professionals and
16 cash collateral orders. It made the court -- it was the
17 court and the U.S. Trustee who were pointing out issues,
18 asking professionals to pay -- this estate to pay 100
19 percent of expenses for a non-Debtor. It was the court
20 sometimes pointing these issues out. It's all in the
21 record. All there. I'm not adding anything new. I'm
22 talking about the evidence that was admitted on the record
23 and what I heard that day.

24 During the hearing, it was specifically asked,
25 questions about potential conflicts with Alex Jones. And

1 his answer was his answer. You may not like the answer that
2 he gave, but he gave an answer.

3 Mr. Schwartz also gave very concerning answers
4 about what's going on in this case. The record speaks for
5 itself. I'm not going to point specifically things out.
6 There's a transcript. There are questions, there are
7 answers. I stand by every word I ruled on. I stand by
8 everything I did, every part of the legal analysis. The
9 questions and the answers are what they are. I point things
10 out. Those were just examples. If I point things out, then
11 people focus that I focused this decision, I focus it on the
12 law before me, Rule 59.

13 Nothing I've heard today, been considered today,
14 warrants granting the relief requested. Movants want a do-
15 over and hope to provide better answers. Rule 59 isn't a
16 proper tool to ask for a second chance.

17 I disagree with Mr. Shannon's characterization
18 that there's not -- it was unclear as to what the Court
19 ruled on as to concerns about impartiality in this case.
20 Read the whole transcript. It's there. (indiscernible)
21 highlighted by the Firm's alternative argument. So the
22 record is clear. The Debtor filed an application to
23 (indiscernible) requested to retain the Firm as co-
24 bankruptcy counsel to the Debtor under Section 327(a).
25 That's specifically in the application.

1 The alternative argument today is that the Court
2 should consider additional evidence to retain the firm as
3 special counsel under Section 327(e), which requires a
4 different legal standard not requested in the original
5 application. It is not a basis to change or even consider
6 granting an application filed by the Debtor on an illegal
7 theory. If the Debtor wants to do it, the Debtor can file
8 it.

9 The movants point to no facts or caselaw
10 overlooked by this Court. There's no evidence of manifest
11 injustice. There's no surprise that a court holds movants
12 to satisfy their burden in connection with retention
13 applications under Section 327(e).

14 In this case, an application was filed, evidence
15 was presented, and they didn't meet the burden. That
16 doesn't mean that the professionals are bad people, it just
17 means they didn't meet the burden.

18 Denying these applications as was appropriate
19 under the law. You don't get a do-over. You also can't
20 point to (indiscernible) of mistake in the law or fact this
21 Court made in rendering its decision.

22 There's also no basis to take additional
23 testimony, amend findings of fact and conclusions of law or
24 make new ones or direct the entry of a new judgement.

25 To ensure that we have a clean record, any other

1 argument raised by the movants in their papers or today in
2 the arguments not specifically discussed by me now, trust
3 me, I heard you. I just rejected. Both movants failed to
4 show that relief under Federal Rule 59 is warranted in this
5 case. Both motions for rehearing are denied. I will issue
6 a short order denying it on the basis of Rule 59, not
7 because it's irrelevant or because there's another
8 application out there.

9 I'm going to consider the motion for admin claim
10 as the motion for admin claim. Maybe there's a basis to
11 grant it, maybe there's not. I don't know. That's not for
12 me today. What I'm ruling on is a request for a rehearing
13 under Federal Rule of Civil Procedure 59, the legal standard
14 there. And it's made applicable in this case, in bankruptcy
15 cases, under Federal Rule of Bankruptcy Procedure 9023.

16 Again, I reiterate, I hoped back then to never
17 rule on another application the way I did. I hope to never
18 rule on one of these again. I am bound by the law, and I am
19 duty-bound to rule based on the law and the facts, and
20 that's what I've done. And that's what I did back then, and
21 that's what I'm doing now. And that's my ruling. I will
22 issue a short order, again, denying both motions for a
23 hearing for the reasons stated on the record.

24 Parties want a hearing on the admin claims.
25 Contact my case manager and let's pick a date. We'll take

1 it up there. They're separate in my mind. We'll take that
2 up and how I rule, I don't know. I haven't taken it up.
3 And I don't want to prejudge anything. The law is the law
4 there, and we'll take it up.

5 On that one though I think -- I've said this
6 before. You probably need to ride on that one. I think it
7 creates -- motions for rehearing, I can rule on the record.
8 I think you're going to need a publishable decision on the
9 motion for an admin claim. I don't care if it gets
10 published or not. I don't care about that stuff. But I do
11 think something -- I can walk through legal reasoning in a
12 request for the motion for an admin claim in these
13 circumstances. I may change my mind, but at least I think
14 that's the way it would go. So if we're going to go forward
15 on that, I want the issue fully briefed. And I'm going to
16 set aside some time because I want parties to present all
17 their evidence. The standard is the standard. Whoever has
18 the burden of proof, present your case. We'll take it up.
19 And that's how we'll deal with it.

20 What else do we need to talk about before we turn
21 to Alex Jones and the FSS, the regularly-scheduled matters?

22 If you filed a -- if you've made an appearance, I
23 should say, in connection with this and you want to stick
24 around for the remainder of the hearing, you are more than
25 welcome to. If the parties who participated in the 10:00

1 don't wish to participate in the 11:00, that's completely
2 fine. No need to ask me for permission to be excused.

3 With the permission of the parties, I'm going to
4 start with the 11:00. And I'm going to assume that if you
5 made an appearance in the 10:00, it's good for the 11:00 as
6 well.

7 If you need to hang up, hang up. No need to ask
8 me for permission to be excused. My feelings will not be
9 hurt.

10 Mr. Ruff, anything in connection with the 10:00
11 before we turn to the 11:00?

12 MR. RUFF: Yeah, and this is in connection with
13 the 10:00. And it just -- I just want to throw it out there
14 and it just occurred to me. With respect to the
15 administrative claim motion, might it make sense to first
16 deal with the legal issue of whether or not there is a legal
17 basis to make the admin claim? And then if there is, if
18 Your Honor rules that there is, then we could set aside a
19 separate time to take up the evidence of what is the
20 magnitude of the claim, similar to whether or not someone
21 gets a judgment and then we figure out what the damages are?

22 THE COURT: I understand the point. I'm going to
23 take it all up at once.

24 MR. RUFF: Fair enough, Your Honor. I just --

25 THE COURT: And I understand the point. I just

1 don't want to have two separate hearings. I will -- if
2 Shannon & Lee or Schwartz want to go forward with it, I want
3 them to -- you know, just like there was a standing issue
4 today and we dealt with the hearing, I want them to have
5 every opportunity to present everything. If I'm going to
6 write -- everything I write, I'm going to write on it right
7 up front. It's all going to -- whatever decision I issue
8 will address both, but I do understand the point. There
9 could be an A, and A unlocks B, and we're going to deal with
10 it all in one hearing.

11 MR. RUFF: Sounds good, Your Honor.

12 THE COURT: Okay. And again, I -- I
13 (indiscernible) want legal briefing on everything. And I
14 think parties should be addressed. If there are issues, I
15 want everything. I want everyone to raise their issues.
16 Again, we'll take them up at that time. But it's a good
17 question. I'm glad you asked it. Because I want to make
18 sure that everybody is really clear. I'm going to give
19 everyone as much time -- clear out a half an afternoon or
20 something. If we need it, we need it. If we don't, then
21 it's there. But those who want to go forward, just reach
22 out to my case manager, and we'll just clear out the time.

23 So let me take appearances. Why don't -- I
24 understand that there could be parties who may make an
25 appearance just in the Alex Jones case and not in the Free

1 Speech. We are holding kind of combined hearings. But if
2 you are just -- if you can, just let us know if you're
3 making an appearance in one or in both. I'm not going to
4 jam you if you -- because I think we're just going to take
5 the issues up as they proceed.

6 The parties in the courtroom, you've already
7 considered your appearance.

8 Mr. Battaglia, I would note -- that's your client
9 back there on video. I just wanted you to see him there.
10 He is here.

11 Is there anyone on the line that wishes to make an
12 appearance? I would just ask that you please hit five-star
13 and let's take things up.

14 Okay. Last digits 4678. All right, last digits,
15 361 number with the last digits 4678, you are live.

16 MR. JORDAN: Shelby Jordan. I represent Alex
17 Jones as co-counsel.

18 THE COURT: Okay. Good morning.

19 All right, 1174, last four digits. Wait, no. I'm
20 lying. Let's see. Someone hit -- anyone else -- anyone
21 wish to hit -- please hit five-star again. Oh, I muted.
22 1933, last three digits. A 917 number.

23 MR. ZENSKY: Your Honor, David Zensky, Akin Gump
24 Strauss Hauer & Feld, proposed counsel for the Official
25 Committee of Unsecured Creditors in the Alex Jones case.

1 THE COURT: Okay.

2 MR. ZENSKY: I am appearing today with my partner,
3 Sara Brauner. I would be appearing in both cases as needed.

4 THE COURT: Okay. Thank you, Mr. Zensky. Good
5 morning, Ms. Brauner. Okay. Anyone else?

6 Yes. I'm sorry, that's right. I've got one in
7 the courtroom.

8 MR. MOSHENBERG: Your Honor, good afternoon. Or
9 good morning, I should say. Avi Moshenbergs, here on behalf
10 of the Texas plaintiffs in the Jones and the FSS matter,
11 Your Honor. Thank you.

12 THE COURT: Okay. Good morning. All right. Ms.
13 Stephenson, I know I've got o unmute your lines somewhere.
14 So let me -- I've got a 212 number there. If you hear the
15 word, unmute it. That was me.

16 MS. BRAUNER: Good morning, Your Honor. I believe
17 that was my line. Sara Brauner, Akin Gump Strauss Hauer &
18 Feld, on behalf of the Jones UCC.

19 THE COURT: All right, good morning. Anyone else?
20 All right, Ms. Driver or Ms. Stephenson, I need one of you
21 to hit five-star. I may just ask you a question or two.
22 I'm going to step out here. Everyone mute your lines.
23 Let's see if I can get this done without -- all right.

24 Ms. Driver or Ms. Stephenson?

25 MS. DRIVER: Your Honor, I believe you have me.

1 THE COURT: All right. There you are. Okay.

2 Anyone else wish to make an appearance?

3 MR. KIMPLER: Yes, Your Honor. Are you able to
4 hear me? I've been hitting five-star, but I'm not sure it's
5 working.

6 THE COURT: Yeah. I just unmuted the entire line,
7 folks. So let's all be careful.

8 MR. KIMPLER: Your Honor, if I may. It's Kyle
9 Kimpler from Paul, Weiss, Rifkind, Wharton & Garrison. I am
10 here today on behalf of the Connecticut plaintiffs in
11 individual capacity together with my co-counsel, Mr. Chapple
12 and Ms. Sterling. We'll be appearing in both cases.

13 THE COURT: Good morning, and good to see you, Mr.
14 Chapple and Ms. Sterling. Good to see you. All right.
15 Anyone else?

16 MR. CHAPPLE: Good morning, Your Honor.

17 THE COURT: All right. I'm not sure who wants to
18 take the lead, but I appreciate everyone's patience in
19 connection with the prior hearing. I really appreciate
20 everyone's patience. All right.

21 MS. DRIVER: Your Honor, Ms. Driver again on
22 behalf of Mr. Jones.

23 We did do an agenda today. It wasn't exactly the
24 process that Your Honor had outlined. I should have
25 included FSS. So we are going to correct that for the next

1 matter. But our matters up for today are I believe agreed
2 to with some comments from some of the U.S. Trustee and the
3 UCC.

4 THE COURT: All right. Before you start -- before
5 you --

6 MS. DRIVER: Christina Stephenson has been
7 handling that --

8 THE COURT: Ms. Driver, hold on a second. Again,
9 folks, please mind your line. If you're not Ms. Driver --
10 I'm going to have to mute the line.

11 MS. DRIVER: Yeah.

12 THE COURT: All right, Ms. Driver, go ahead and
13 hit five-star right away. (indiscernible) five-start. I'm
14 just going to unmute lines for the folks who I know are
15 there. And just please keep your phone on mute.

16 Ms. Driver, are --

17 MS. DRIVER: Your Honor, I was just about -- I am.
18 Your Honor, I was just about to throw this to Ms.
19 Stephenson. She has been working with the U.S. Trustee and
20 Ms. Brauner with the Unsecured Creditors Committee, proposed
21 counsel, to make some just simple changes that were
22 absolutely acceptable to us to the orders that we will be
23 ready to present to you at the end of this hearing.

24 Ms. Schleizer on behalf of BlackBriar is here as
25 well to the extent we do have a couple of applications that

1 were set on negative notice that were not technically set
2 for hearing today, but their objection period has passed.
3 There were also some comments to their orders that have been
4 made as well. And if Your Honor doesn't mind, we are happy
5 to present those near the end of the hearing if that's okay.
6 And again, Mr. Schleizer is here. Mr. Jordan is here of
7 course for his application, and I am here on behalf of my
8 firm's application.

9 But Ms. Stephenson will be walking through the
10 presentations and the comments.

11 THE COURT: Okay. Before we begin -- I'm just
12 doing this because -- is there anyone who wishes to address
13 the Court about anything before we get started with the
14 agenda? And for those in the virtual world, I'm doing the
15 equivalent of someone walking up to the podium before we
16 actually get started. If there is someone, let me know.
17 Let's see. Okay.

18 MR. BATTAGLIA: Good morning, Your Honor. This is
19 Ray Battaglia.

20 THE COURT: Okay. Good morning, Mr. Battaglia.
21 Before you being, Mr. Kimpler, did I (indiscernible). I
22 want to make sure -- I know you said you were having some
23 issues hitting five-start. Not issues hitting five-star,
24 you were hitting five-star and I didn't recognize you. I
25 wanted to make sure that I recognized you.

1 MR. KIMPLER: Yes. Are you able to hear me, Your
2 Honor?

3 THE COURT: Yes, just fine. I apologize for that.
4 I wanted to make sure that I took care of you. You were
5 hitting five-star correctly. I was not hitting the right
6 button, and that's on me. Okay.

7 Mr. Battaglia, were you just (indiscernible) or
8 did you wish to address the Court?

9 MR. BATTAGLIA: Just address the Court briefly,
10 Your Honor. Ray Battaglia on behalf of Free Speech Systems.
11 The agenda, which we had agreed would sort have one agenda
12 that was filed in both cases that would list everything does
13 leave off the Debtor's interim cash collateral, which is set
14 for today, Docket 6 in the FSS case. And prepared to do
15 just that. And we'll go in whatever the Court desires.

16 THE COURT: So what I would like to do is address
17 -- go through the agenda and then take up cash collateral.
18 And then I'm going to ask if the parties are comfortable
19 proceeding with the retention applications today and if they
20 are. But I'll leave that last.

21 So maybe we'll go through the agenda
22 (indiscernible) and then take up cash collateral, unless Mr.
23 Moshenberg is going to tell me it's a dumb idea. But go
24 ahead.

25 MR. MOSHENBERG: It's a horrible idea.

1 THE COURT: Terrible. Horrible.

2 MR. MOSHENBERG: The only other matter, Your
3 Honor, is we are preparing to file a motion to lift the stay
4 for Texas plaintiffs Leonard Pozner and Veronique De La Ros.
5 We contacted the Court this morning, or my co-counsel did,
6 Jared (indiscernible). We were told to bring it up today,
7 that there may be some omnibus scheduling the Court wanted
8 to do. And I wanted to raise that to the Court's attention.

9 THE COURT: Yeah. I was made aware. And -- but
10 since we're taking on omnibus hearing dates here -- normally
11 motions to lift stay are self-calendared and they're done on
12 a Tuesday at 10:00. And there could be ten different ones
13 at that time because preliminary -- normally they are
14 preliminary hearings or reschedule of final there. If you
15 want to file a motion and you need a hearing date -- I
16 wanted to see if we were going to have an omnibus date,
17 because then it could be taken up at the next omnibus date.
18 You need a separate hearing. What I didn't want was a
19 potential -- like a hearing that was going to require
20 substantive time to be scheduled and you walked in and there
21 were 15 other people getting you there.

22 In connection with the Jones case or the FSS case,
23 I don't want to -- I want to keep you separate from the kind
24 of self-calendared 362 schedule to appropriate time.

25 MR. MOSHENBERG: Okay.

1 THE COURT: No, and I appreciate it. That's a
2 good point. And that goes for anybody else who is filing
3 who may seek relief. I think some matters can bet put
4 together. Some I think need separate hearings. And if
5 we're going to have an omnibus hearing date, then we can
6 just kind of keep the agenda. If you need a separate
7 hearing, you can also get one as well, as well as anyone
8 else. All right?

9 MR. MOSHENBERG: Perfect. Thank you, Your Honor.

10 THE COURT: Thank you. So I guess all that being
11 said, (indiscernible) before you file. Or once you file,
12 you need a hearing date. If we schedule an omnibus and it's
13 within the time, you are welcome to -- if we pick another
14 date today, if you file something and you need a hearing, I
15 just don't want you to self-calendar it and get lumped in
16 with the Tuesday 10:00 folks. Okay? And make sure that
17 everyone has notice of a hearing. Okay.

18 Ms. Stephenson, I'll turn it over to you.

19 MS. STEPHENSON: Your Honor, can you hear me okay?

20 THE COURT: Yeah. No, I thought you had to hit
21 five-star. I was going to say here I go again. But go
22 ahead.

23 MS. STEPHENSON: Okay, great. Thank you. Just a
24 matter of housekeeping before we get started. So our
25 exhibits, they were filed with the witness and exhibit list

1 at Docket 97 with the exception of Exhibit 7. That's the
2 employment agreement, which we were trying not to file on
3 the general docket. We emailed that to all the parties, and
4 I believe we emailed a copy to the Court as well.

5 THE COURT: So I just want to make sure my
6 courtroom deputy -- because we're kind of doing two cases at
7 the same time. The witness and exhibit list was filed at
8 Docket 97 in 22-33553, the Alex Jones case.

9 MS. STEPHENSON: That's correct.

10 THE COURT: Okay. Okay. How do you wish to
11 proceed? I'll turn it over to you. Where do you want to
12 go?

13 MS. STEPHENSON: If we could start with number one
14 on the agenda, employment of bankruptcy counsel. That would
15 be the application to employ my firm, Crowe & Dunlevy PC.
16 It was filed on December 20th, 2022, Docket Number 69. We
17 have not received any objections, but we did receive
18 comments from both the United States Trustee's Office and
19 the Unsecured Creditors Committee. We have incorporated
20 those comments into a proposed order and we have also, at
21 the behest of the United States Trustee's office, filed a
22 supplemental declaration for Ms. Driver -- no, I'm sorry,
23 that was at the behest of the United States Trustee's
24 Office, forgive me -- clarifying the source of the retainer
25 that our firm received prepetition. That supplemental

1 declaration is filed at Docket Number 89. And if Your Honor
2 would like to view a redline of the proposed order, the
3 revised proposed order, it was at Docket 98-1. The clean
4 version is at Docket (indiscernible).

5 THE COURT: Let's do this just so we have a clean
6 record. Does anyone object to the admission of the exhibits
7 1 through 7 at Docket 97? Any objection to the admission of
8 those exhibits for purposes of today's hearing? Okay. So
9 they are admitted. And that would include the initial
10 declaration of Vickie Driver and the supplemental
11 declaration of Vickie Driver at Docket 89. I just want to
12 make sure that we had an evidentiary basis to proceed, and I
13 wanted to make sure -- well, you all know why.

14 MS. STEPHENSON: Thank you, Your Honor.

15 (Exhibits 1 through 7 admitted into evidence)

16 THE COURT: Let's see. And I do appreciate the
17 supplemental declaration. And that was filed at Docket 89,
18 right?

19 MS. STEPHENSON: Ninety-eight.

20 THE COURT: Ninety-eight.

21 MS. STEPHENSON: Oh, I'm sorry, 89 is the
22 supplemental declaration. You were correct, Your Honor.
23 Sorry. I was looking at the proposed order. Excuse me.

24 THE COURT: No, no. The proposed order was at --
25 okay. Let me just -- I did -- I reviewed these very

1 carefully. I did appreciate that there was some additional
2 disclosure. I was going to ask questions about that. And
3 we're in a separate hearing. I would note for the record I
4 do consider, you know, every application. And I know
5 sometimes there are unopposed applications, but I do take
6 every application, everything that's filed in front of me, I
7 take it seriously. And I think sometimes parties talk about
8 things and work things out. But I still need the
9 evidentiary basis to support relief requested. Sometimes I
10 have questions, sometimes I don't.

11 This was going to be one of the ones that I have
12 questions about, just because I wanted to understand it a
13 little bit more. But the declaration that was submitted and
14 now admitted into evidence, I did have the opportunity to
15 review, and it answered my question. And I think there's
16 transparency, greater transparency about that. So I very
17 much appreciate it.

18 So let me ask -- and I did review the initial
19 declaration by 12:01:57 Ms. Driver and I did have a chance
20 to review everything that was filed in connection with this.
21 Let me ask, does anyone wish to be heard in connection with
22 the application to retain Crowe & Dunleavy? Okay.

23 Before the Court is an application to employ Crowe
24 & Dunlevy, PC, as counsel to Mr. Alex Jones under Section
25 327(a) of the bankruptcy code. Court has noted that this is

1 a core proceeding under 28 U.S.C. 157. Court has
2 jurisdiction to consider this application under 28 U.S.C.
3 1334. The Court has reviewed the application, considered
4 the evidence submitted in the record. Ms. Driver is here.
5 Appreciate the parties working on this.

6 The Court had expressed -- well, the Court had not
7 expressed -- the Court had some questions about the source
8 of the retainer provided to Crowe & Dunlevy. Appreciate the
9 parties working in this case.

10 Let me ask, before I rule -- let me ask from the -
11 - just want to make sure the Committee had an opportunity to
12 review this application and I want to hear from the United
13 States Trustee, and I want to make sure they're okay with
14 it.

15 MR. RUFF: Your Honor, I could just represent on
16 behalf of the U.S. Trustee, we did have an opportunity to
17 review it. We made comments. Those comments were
18 incorporated to our satisfaction and we have no opposition
19 to the application.

20 THE COURT: Okay. Committee, you all okay? Oh,
21 Ms. Brauner, I got it -- oh, there you go, Ms. Brauner. I
22 apologize.

23 MS. BRAUNER: Can you hear me now, Your Honor?

24 THE COURT: Yes, I can. Hi.

25 MS. BRAUNER: Thank you. Sara Brauner, again,

1 Akin Gump, on behalf of the Committee. We did have the
2 opportunity to review the application and we have some
3 limited comments, which were incorporated, and we have no
4 further issues. Thank you.

5 THE COURT: Okay. And am I comfortable for both
6 parties that the revised comments are reflected in, I guess,
7 what's ECF 98? The revised order that was filed on...?

8 MS. BRAUNER: Yes, Your Honor, for the Committee.

9 THE COURT: Okay. Trustee? (indiscernible)
10 revised on that? Okay. Just looking at the revised
11 comments here. Okay. With the additional disclosures that
12 were provided, and I appreciate the Committee and the UST
13 taking a look at this. And I appreciate the additional
14 disclosures. I just think more transparency is just so
15 important in cases.

16 And I believe that the standard under Section
17 327(a), as well as the Fifth Circuit case law, the Crowe &
18 Dunlevy application satisfies those standards. And I'm
19 going to grant the application and I'm going to sign the
20 proposed order I've had an opportunity to review. And there
21 are comments incorporating it by the Committee, or Committee
22 comments and UST comments. I've reviewed those. I'm
23 comfortable with them. I think they make a lot of sense and
24 I will grant the application. I'll get that signed and on
25 the docket shortly.

1 Where do we go next?

2 MS. STEPHENSON: Okay. Thank you, Your Honor. We
3 would like to go next to the application to employ Jordan &
4 Ortiz, P.C. as Debtors' co-counsel, effective as of the
5 petition date. It was filed on December 21, 2022 at Docket
6 Number 71.

7 There was also a supplemental declaration for Mr.
8 Shelby Jordan filed at Docket Number 90. This has similar
9 clarification of the source of the retainer and an
10 additional verification requested by the (indiscernible)
11 that Mr. Shelby has no representation of any related
12 parties. So that's in that supplemental declaration at
13 Docket Number 90.

14 And then you'll see the redline of the revised
15 proposed order that has the United States Trustee's and
16 UCC's comments at Docket Number 90 and the redline at 99-1
17 on the docket.

18 THE COURT: Okay. Let me just ask Mr. Ruff this
19 morning, same questions on this. Have you had an
20 opportunity to review this application? Are you comfortable
21 today?

22 MR. RUFF: I have and I am comfortable, Your
23 Honor.

24 THE COURT: Okay. Ms. Brauner, same?

25 MS. BRAUNER: Yes, Your Honor. Thank you.

1 THE COURT: Okay. I have the same questions as
2 well for Mr. Jordan. I do think the declarations provide
3 additional comfort to the Court on these issues. There's a
4 proposed order at 99 that incorporates comments before this
5 hearing. And again, application is requested under Section
6 327(a). Court has jurisdiction. And I think there's been
7 proper notice of today's hearing and service of the
8 applications in both, in Crowe & Dunlevy and in this one.

9 I'm comfortable that the standard has been met
10 under Section 327 as applying case law and the standards
11 directed under the Code. I appreciate the careful attention
12 provided by the Committee and the United States Trustee.

13 I'm going to grant the application at 99 and I'll
14 sign the proposed order -- I should say the application and
15 the proposed order at Docket 99. I do want to note for the
16 parties, you know, these professionals know that, but I'm
17 just saying it so that it is said. Don't read anything into
18 it. I'm just laying it out.

19 If it turns out that there are additional issues
20 that should be made aware of in connection with the
21 retainer, or any other connections that are undisclosed,
22 professionals have an ongoing duty to update their
23 disclosures and to bring issues to the Court. I am
24 confident that these professionals, who are very
25 experienced, understand their duties.

1 I'm not going to spend -- I've got no basis to
2 think of anything now. And just know, I'm just saying it so
3 that it's said. I want to make sure that there's constant
4 transparency in these cases. So I'm only saying it so that
5 it is said, not because I'm -- no one should read anything
6 into that. But I'm going to sign the order at 99.

7 Where do we go next?

8 MS. STEPHENSON: All right. Thank you, Your
9 Honor. Next is the Debtors' utility motion. It was filed
10 on 12-21-22. There have been no objections filed. We have
11 communicated with various utility companies since the motion
12 was filed. We communicated with AT&T, Tri-County Water,
13 Spectrum Charter.

14 We have also incorporated comments from the UCC
15 into our revised proposed order filed at Docket Number 100.
16 And the redline is at Docket 100-1. I believe there are no
17 comments from the United States Trustee on this one.

18 THE COURT: Okay.

19 MS. STEPHENSON: But I --

20 THE COURT: Go ahead.

21 MS. STEPHENSON: Sorry to interrupt. I'm so
22 sorry. I didn't mean to interrupt you, Your Honor.

23 THE COURT: No, no. What's up?

24 MS. STEPHENSON: Oh, I was just going to say I can
25 give you a little bit of (indiscernible) for the procedures

1 if you want more detail.

2 THE COURT: The only question... First of all,
3 let me know, does anyone wish to be heard connection with
4 the utility motion?

5 My only -- first of all, let me just note, there's
6 been proper notice of today's hearing on this and service of
7 this motion. The relief requested is standard, establishing
8 that utility companies can receive adequate assurance of
9 payment in accordance with Section 366 of the Bankruptcy
10 Code. I appreciate the Committee's comments.

11 My only question is, can't we do this as a final?
12 Do we need an interim order to make sure that professionals
13 don't -- to make sure utilities don't turn lights off? Is
14 there a reason? I just want to know --

15 MS. STEPHENSON: Your Honor --

16 THE COURT: I don't want to get in the way of the
17 deal, but is there a...?

18 MS. STEPHENSON: No. And I tried to work that --

19 THE COURT: No, no, no. I'm just asking --

20 MS. STEPHENSON: I tried to work that in --

21 THE COURT: I'm not saying -- I don't want to know
22 about (indiscernible). I just want to know, is there a
23 reason we can't do that as a final? And I'm saying this
24 really like we are -- the case has been going on now for a
25 little over a month, and so we're kind of in second day

1 land. And I'd rather just establish one procedure. And I'm
2 happy to turn the word interim into final. I don't want to
3 set a final hearing on a utility motion a month into the
4 case.

5 MR. RUFF: No opposition, for two reasons, Your
6 Honor. As you said, we're well down the road. Unlike first
7 days, we've had a lot of notice and opportunity here. And
8 then, you know, it goes without saying that if a utility
9 company does have an issue, they are free to come to Your
10 Honor and ask for relief from this order.

11 THE COURT: That's exactly right. Right, this
12 motion's been out there for about a month. So that's --

13 MS. STEPHENSON: I agree wholeheartedly, Your
14 Honor.

15 THE COURT: So --

16 MS. STEPHENSON: And on numbers (indiscernible)
17 the order, it had a paragraph that said, in event no timely
18 objections were filed then our order would be deemed a final
19 order.

20 THE COURT: Yeah.

21 MS. STEPHENSON: But we can get rid of that
22 paragraph --

23 THE COURT: No, no, I can --

24 MS. STEPHENSON: -- call it final.
25 (indiscernible)

1 THE COURT: I can turn it into a final. It's been
2 out there --

3 MS. STEPHENSON: Sounds great.

4 THE COURT: It's been out there for a month. It's
5 been out there for a month and this case has been pending
6 for over a month. I think that's more than enough notice
7 for parties that need (indiscernible) it's utilities. And
8 again, I'm not prohibiting utilities from ever coming in.
9 They certainly have the right to come in. This is just to
10 allow the case to progress. So I will -- I'm going to sign
11 the interim order, but I'm going to make it a final order.

12 Where do we go next?

13 MS. STEPHENSON: Thank you, Your Honor. Next we
14 have interim compensation procedures motion. This was filed
15 on December 22, 2022 at Docket Number 74. We used
16 procedures that were pretty much identical to the ones that
17 were approved in FSS.

18 We did incorporate some, you know, light comments
19 from the United States Trustee's office and the UCC into the
20 revised proposed order filed at Docket Number 101, and the
21 redline is at 101-1.

22 I would like to point out one correction that I
23 would like to make. On the redline, Page 2 of 7, there's a
24 numbering boo-boo, where it says A and (a). I'd like to go
25 back and fix that numbering boo-boo.

1 THE COURT: Wait, wait. Can you -- let's see.

2 I'm looking at 101?

3 MS. STEPHENSON: Yes.

4 THE COURT: Okay.

5 MS. STEPHENSON: Yes.

6 THE COURT: Just give me a second. Let me just
7 take a look at something. What paragraph are you referring
8 to?

9 MS. STEPHENSON: The first paragraph. Oh, you
10 know what? That's not right. (indiscernible) on Page 2, it
11 starts the procedures?

12 THE COURT: Yep.

13 MS. STEPHENSON: And we have a -- numbering is
14 wrong. It's an A and then an (a).

15 THE COURT: No.

16 MS. STEPHENSON: No?

17 THE COURT: We're good.

18 MS. STEPHENSON: (indiscernible)

19 THE COURT: Yeah. No, I --

20 MS. STEPHENSON: (indiscernible) paragraph?

21 THE COURT: We're fine.

22 MS. STEPHENSON: Oh, okay.

23 THE COURT: Yeah.

24 MS. STEPHENSON: Okay. Okay, well --

25 THE COURT: Yeah, no --

1 MS. STEPHENSON: -- then the next thing that --

2 THE COURT: I -- what I --

3 MS. STEPHENSON: So on Paragraph 5 on Page 4 --

4 THE COURT: Uh huh.

5 MS. STEPHENSON: -- two pages later it says each
6 retained professional may submit its monthly fee statement
7 on or before January 16, 2023. And what we would like to do
8 is just push this one day back to either today or tomorrow
9 or whatever the parties here see fit, just to allow the
10 professional parties here to go ahead and get December
11 circulated and submitted, so that we're not falling back a
12 month and, you know, next month everybody doesn't have to
13 review two months' worth of statements.

14 THE COURT: How about January 27th, next Friday?

15 MS. STEPHENSON: That's fine.

16 THE COURT: Yeah.

17 MS. STEPHENSON: Does anybody else have an
18 objection to that? I'm fine with that.

19 THE COURT: How about January 27th? Let's just go
20 with that. I'm doing this for the associates who are going
21 to get jammed over the weekend or having to cram one in.
22 I've been there. Some days I'm not going to --

23 MS. STEPHENSON: (indiscernible)

24 THE COURT: Some days somebody's not going to
25 escape this and you'll have to crank it out to the wee hours

1 of the morning. Just might be the day, next Friday, parties
2 can get their fees in. Any object -- and the other change,
3 I think, because I just granted the relief requested, is I
4 can just say co-counsel remove the word proposed, just
5 because I technically -- you are technically counsel now,
6 you and Mr. Jordan, on your -- I don't want to call it --

7 MS. STEPHENSON: (indiscernible)

8 THE COURT: A(a) and A(b). But you know what I
9 mean.

10 MS. STEPHENSON: Thank you, Your Honor.

11 THE COURT: Alrighty. Any objection to the relief
12 requested here? Okay. It's granted. Interim compensation
13 is permitted under the Code. The standards are standard in
14 this District. Everyone retains their rights. Just an
15 interim compensation procedures, procedural -- parties.
16 There'll be plenty of disclosure on fees. It's granted.
17 I'm making that little change -- changing it to January 27,
18 2023 and it is off to docketing.

19 Where do we go next?

20 MS. STEPHENSON: Thank you, Your Honor. The next
21 one I was going to hit was FSS motion to fix the date by
22 which Debtor must assume or reject executory contracts. But
23 if we'd rather stay in the Alex Jones case and hit those to
24 inform in applications which were not set for hearing today,
25 which were just set on regular notice, we can just address

1 those if you'd like.

2 THE COURT: Yeah, there was an extension of the
3 schedules request. I don't I -- it was a proposed --

4 MS. STEPHENSON: Oh, yes.

5 THE COURT: -- agreed order on that. So, here's
6 my question on that. I want the date, whatever you pick to
7 be the date -- so tell me how much -- what I don't want are
8 third and fourth requests, because I think at some point the
9 case has to progress. But I want accurate schedules. So
10 I'm not trying to jam you.

11 The question I really want to know is how much --
12 you know, is the 7th the date that you can get it done? Are
13 you confident about that? Or do you need -- do I need to
14 push it to the 14th? That's what I'm asking. And I know
15 more time is always better, but I want accurate schedules
16 and I don't want additional requests because I think the
17 Committee has a point. At some point, we've got to -- the
18 case has to progress. And at some point there need to be
19 disclosures.

20 And the reason I'm asking this now is -- right --
21 it's just a lot -- it triggers a lot of other things in
22 connection with the FSS case and other things that could be
23 going on, and requests to assume or reject executory
24 contracts, while I'd like to see the Debtors' schedule and
25 actually have the Debtor listed as one of his contracts. I

1 don't want -- I want there to just be -- to the extent we
2 can synch things up.

3 So my question is what date do you really need?
4 Is the 7th the date? Are you confident? I don't want to
5 hold you to it, but what I'm saying is that's the question
6 that I'm asking you. It's the question that I would ask
7 every debtor on a first day. How much time do you really
8 need?

9 MS. DRIVER: Am I still unmuted?

10 THE COURT: Yes, you are.

11 MS. DRIVER: (indiscernible) Okay. I apologize.
12 I might just let Mr. Schleizer, who's on here today, just
13 weigh in on that. (indiscernible) has been working
14 diligently and he also just cancelled a family vacation to
15 really make this work. So I just want to make sure that if
16 we've done that -- if he prefers the 14th, that he gets to
17 let us know that.

18 Mr. Schleizer, could you ask to unmute your line?

19 THE COURT: I'm not recommending the 14th, and I
20 just want to be clear (indiscernible). I want them done. I
21 just want them done right. I think the Committee makes a
22 good point, you know. And I understand the Committee's
23 concern. They don't -- like at some point, we just need
24 them on file. I just want to know what's the real date you
25 need?

1 And I've probably -- hold on, folks. Okay. Did I
2 unmute the right line? Mr. Schleizer, are you there? Hit 5
3 Star again; let me see if I can get you. Ah, there you are.

4 MR. SCHLEIZER: Thank you, Your Honor. We started
5 from a situation where there were no individual accounting
6 records and titles to assets that have been a little bit
7 difficult to get a handle on. If we could have until the
8 14th, I'll feel a lot more confident getting an accurate
9 schedule.

10 THE COURT: I give you to the 14th. I'm only
11 saying this so that it's said, okay? Don't get comfortable.
12 If you can get it in on the 10th, get it in on the 10th. Do
13 what you have to do. I'm going to give you until the 14th
14 because I want to make sure that you have what you need, and
15 I don't want -- I want them right. It's really important to
16 get accurate schedules and I don't want you to file amended
17 schedules just because you tried to beat a deadline. I'm
18 going to give you an extra seven days, but I want them, and
19 I want them right. And I'm sorry you canceled your family
20 vacation, but... That doesn't mean put it back on either,
21 Mr. Schleizer. Just kidding.

22 MR. SCHLEIZER: And --

23 THE COURT: Okay. I'm going to grant that to the
24 14th. Why don't we turn to cash collateral?

25 MR. BATTAGLIA: Yes, Your Honor. Ray Battaglia,

1 for Free Speech Systems.

2 THE COURT: Okay.

3 MR. BATTAGLIA: Mr. Magill is in the courtroom,
4 should the Court have any questions. We circulated the
5 eight interim cash collateral order, along with the cash
6 collateral budget two days (indiscernible) I believe and
7 uploaded it yesterday with the Court. I've heard no
8 objections or no comments that I've not responded to
9 regarding the budget, which is the seminal document at the
10 end of the day. The order doesn't change other than
11 changing the seventh to eighth interim.

12 So, Your Honor, with that, I've heard no
13 objections and we would ask the Court to approve it, subject
14 to whatever comments or questions you may have.

15 THE COURT: Well, the question I had -- and maybe
16 a point of clarification -- there is a -- one -- I've never
17 seen it before -- request for (indiscernible) for about
18 \$20,000 related to Mr. Jones going on a -- I think the
19 comment was, a road show, or road. It looks like a one-time
20 expense. Somebody can just provide me some clarity on what
21 that is.

22 MR. BATTAGLIA: It is, and Your Honor, Mr. Magill
23 will provide the details. But it is a road -- it may not
24 even happen at this juncture, but at the end of the day, it
25 is a roadshow to Florida to sort of meet with

1 (indiscernible), shall we say. So it's meet and greet and
2 it does have, you know, value to the estate in maintaining
3 the Debtors' brand among the people who are his listeners
4 and viewers. And Mr. Magill may have additional comments.

5 THE COURT: Okay. Mr. Magill?

6 MR. MAGILL: Thank you, Your Honor. Yes, it is a
7 one and done and it is not -- does not represent 100 percent
8 of the trip costs. It's being shared by sponsors. Mr.
9 Jones is going to a couple of his colleagues in South
10 Florida and they are paying the majority of the trip and the
11 expenses.

12 THE COURT: Mm hmm.

13 MR. MAGILL: But I thought that based on what he's
14 going to be doing and the fact that I believe this could
15 boost some sales that we really should be having --

16 THE COURT: Mm hmm.

17 MR. MAGILL: -- this time of the year, that I
18 thought it was worth the expense of doing that one and done.
19 But I wanted to make the Court aware that this is not 100
20 percent. We're splitting the cost with others.

21 THE COURT: Okay. Let me ask, does anyone wish to
22 be heard in connection with the cash collateral order in the
23 Free Speech case? I've got to... Okay. Look, I've
24 reviewed the budget. I've got no issues with it. I
25 understand. I just wanted some clarity on the expense. You

1 know me, I'll ask --

2 MR. MAGILL: Of course.

3 THE COURT: I'll ask questions.

4 MR. BATTAGLIA: And that is the question the U.S.

5 Trustee's office had as well, Your Honor --

6 THE COURT: Yeah.

7 MR. BATTAGLIA: -- and we addressed it with them.

8 THE COURT: You got it. I've got no issue with

9 it. I think you all looked at it, you thought about it.

10 Okay.

11 MR. BATTAGLIA: Your Honor, the order does provide

12 for a reset date for what hopefully would be the ninth

13 interim. And I believe the budget takes us through February

14 17th, so it would require hearing it in advance of the 17th

15 --

16 THE COURT: Okay.

17 MR. BATTAGLIA: -- of February.

18 THE COURT: Let me just ask before we kind of talk

19 about the other professionals. When do we need to meet

20 again? Maybe we can set whatever hearing date before the

21 17th... When do we need to -- (indiscernible) going to come

22 back?

23 MR. BATTAGLIA: Your Honor, anytime the week of

24 13th is fine by me. I am -- let's see -- I think I'm

25 leaving on a vacation on the 17th, so the 17th would not be

1 good for me.

2 THE COURT: Mr. Schleizer just cancelled his.

3 Just (indiscernible).

4 MR. BATTAGLIA: I've been toiling in this coal

5 mine for about eight months now, Judge --

6 THE COURT: Yeah.

7 MR. BATTAGLIA: -- so I've earned a vacation.

8 THE COURT: Yeah, I... Okay. Let me just pick a
9 date here. How about February 14th? No, wait. What date
10 did you tell me, Mr. Battaglia?

11 MR. BATTAGLIA: The 17th is the expiration of the
12 cash collateral order, and that's the day I leave the
13 country, so --

14 THE COURT: Okay.

15 MR. BATTAGLIA: -- anytime the 13th through the
16 16th is fine by me.

17 THE COURT: What about the 14th at 1:00?

18 MR. BATTAGLIA: That's fine, Judge.

19 THE COURT: February 14th at 1:00. Okay. Let's
20 do it.

21 MR. BATTAGLIA: Very good, Your Honor.

22 THE COURT: Alrighty. Let me write that down.

23 MR. BATTAGLIA: The other motion, I wasn't sure
24 that it was set, but it is the Jones motion to compel a date
25 by which the Debtor must assume or reject contracts.

1 There's been an order circulated, Your Honor. I know it's a
2 topic of some concern. We addressed what Mr. Jones' salary
3 might be. There is no change in the current budget for his
4 salary. And we have had preliminary conversations about an
5 incentive-based compensation system, which we hope would be
6 advantageous to both estates. But they have not progressed
7 because of the necessity of having some additional financial
8 information.

9 I know parties have filed reservations of rights,
10 and I'll tell the Court, we wouldn't contemplate doing
11 something that wasn't approved by this Court after
12 appropriate notice of hearing. And I'm sure I speak for Ms.
13 Driver in that regard as well. So if there is some
14 agreement by which we want to proceed with Mr. Jones, that
15 will be the subject of a forthcoming motion.

16 But with respect to the motion to compel
17 assumption -- a deadline for assumption or rejection, we
18 have consensually agreed to a 90-day, which could be
19 extended for cause shown for the filing of an appropriate
20 motion to either assume or reject by that deadline, and
21 which would, in and of itself, allow this Court to determine
22 any cure claims if the decision were made to assume.

23 I think my comments and I think Mr. Kimpler's firm
24 had some comments as well. I think they align with each
25 other, but I'll let others comment. So we at least

1 contemplated that within 90 days we will file something with
2 this Court on assumption or rejection. If in the interim we
3 come up with some proposal to deal with a new or modified
4 contract, we'll bring to the Court's and the parties'
5 attention as well.

6 THE COURT: Okay. Anyone else wish to be heard?
7 So, there's nothing I need to do today. Just sit back and -
8 - or are you asking me to sign the agreed order?

9 MR. BATTAGLIA: I have no objection to the entry
10 of the order that has been revised. And I think Ms.
11 Stephenson is controlling the document at this point. I
12 don't know whether she has had other comments from other
13 parties. But it seemed to me that it had percolated pretty
14 significantly (indiscernible).

15 THE COURT: Everybody's just kind of preserving
16 their rights.

17 MS. STEPHENSON: (indiscernible)

18 THE COURT: Yes. Yes.

19 MS. STEPHENSON: There are only two parties that I
20 have not gotten final approval from on the proposed order
21 (indiscernible). Mr. Battaglia's version was the last
22 version that we've been sending around that seems -- you
23 know, has the most approval, that I'm definitely fine with.

24 So we were just waiting to hear from the last
25 couple of groups to make sure everybody was signed off.

1 THE COURT: So, okay.

2 MR. KIMPLER: And Your Honor, if I may -- Kyle
3 Kimpler, on behalf of --

4 THE COURT: Yes, Mr. Kimpler.

5 MR. KIMPLER: -- the Connecticut Plaintiffs.

6 THE COURT: Yes, sir.

7 MR. KIMPLER: I think what Mr. Battaglia said is
8 consistent with our negotiations. We've made some
9 clarifying revisions to the proposed order, the Court having
10 (indiscernible) just intended to make sure that if a
11 decision to assume or amend the contract as stated, if
12 appropriate notice is given to the families so that they
13 have a chance to respond as appropriate. (indiscernible)
14 concerned that the original order is a little bit unclear on
15 how that would work. That seems to be (indiscernible) in
16 the same direction at this point. And (indiscernible) will
17 be forthcoming.

18 THE COURT: I think that makes a lot of sense and
19 I got it. I got it. So if there's going to be any decision
20 on assumption and rejection, everybody gets notice.
21 Everybody gets a chance, the opportunity to look at it and
22 give it some thought. And this will be transparency in the
23 process. So that makes sense to me.

24 The docket number where that is, I just want to...
25 Someone remind me.

1 MS. STEPHENSON: It's on the FSS docket. It's
2 349.

3 THE COURT: FSS 349. Just give me a second.
4 Okay. That's the motion. Is the proposed order that
5 everybody's describing, is that the one that's attached to
6 this at 349, or is there another one?

7 MS. STEPHENSON: (indiscernible) No, Your Honor,
8 it has not been filed yet. I was just waiting to get
9 everybody to sign off --

10 THE COURT: No --

11 MS. STEPHENSON: -- before I --

12 THE COURT: No.

13 MS. STEPHENSON: -- filed a redline.

14 THE COURT: Got it. So, once you upload that, can
15 you let (indiscernible) know it's up?

16 MS. STEPHENSON: Yes, Your Honor.

17 THE COURT: Okay. Got it. Okay. And the agreed
18 order --

19 MR. BATTAGLIA: And Your Honor, there are no other
20 matters (indiscernible) -- sorry.

21 THE COURT: No, no, no, no. Go ahead.,

22 MR. BATTAGLIA: I was going to say there are no
23 other matters set in the FSS case.

24 THE COURT: Okay. So, going back to the Jones
25 case, there was an agreed order -- or I should say there was

1 an order on the extension. That's the one at 88, right, Ms.
2 Stephenson, on the agreed order on the extension of time for
3 schedules? Did I get that --

4 MS. STEPHENSON: I think so. I don't have that
5 one in front of me. My apologies, Your Honor.

6 THE COURT: No, no, no, no. What is it -- okay --
7 yeah, that's the stip that says February 7th. So I'm going
8 to just call it just order regarding additional extensions
9 of time. I'm just going to change it because I know I'm
10 adding my date in here. I'm going to call it an order.

11 MS. STEPHENSON: Okay.

12 THE COURT: And we'll go from there. Let me ask
13 the parties, any issue with me -- anyone have any issue with
14 me taking up the additional retention applications today in
15 the Alex Jones case? Okay. I'm okay with it. Let's
16 proceed.

17 MS. STEPHENSON: Okay. Your Honor,
18 (indiscernible) matters are the application for the
19 employment of Blackbriar Advisors LLC as financial advisor
20 to the Debtor. That was filed December 29th of '22. And
21 the application of the Debtor to employ Rachel Kennerly,
22 LLC, as tax accountant, Docket Number 83. And that was
23 filed on 12-30-2022.

24 And what we've done on those two, Your Honor, is I
25 circulated the proposed orders and I have incorporated the

1 same comments from the United States Trustee's office that I
2 received on the prior professional orders; very, very
3 similar. And I also made the same changes that I had
4 previously received from the UCC (indiscernible) as well. I
5 have not filed those yet, but when I do, you'll see that
6 they look very, very similar to the ones that were filed for
7 Crowe & Dunlevy and Jordan & Ortiz.

8 THE COURT: Okay. Okay. Any declarations you
9 wish to admit or any (indiscernible)?

10 MS. STEPHENSON: No, I haven't done any
11 supplemental declarations. But if Your Honor would like to
12 see supplemental declarations --

13 THE COURT: No, no, no.

14 MS. STEPHENSON: -- similar to the ones --

15 THE COURT: I'm asking --

16 MS. STEPHENSON: (indiscernible)

17 THE COURT: Are we relying on the (indiscernible)
18 that's on file?

19 MS. STEPHENSON: Yes.

20 THE COURT: Okay.

21 MS. STEPHENSON: Yes, Your Honor.

22 THE COURT: Okay. Okay. All right. Anyone wish
23 to be heard in connection with Mr. Schleizer's retention
24 application?

25 MR. RUFF: Your Honor, only just to confirm what

1 was represented on the record already, that we did provide
2 comments and we understand that they are accepted. Assuming
3 the orders submitted are the ones that we agreed to, then no
4 opposition to these applications.

5 THE COURT: Okay. Okay. The Court has reviewed
6 this application and, again, this is another professional to
7 be retained under Section 327 of the Bankruptcy Code. Court
8 has reviewed the declarations and understands the proposed
9 comments have been accepted. Subject to review of the final
10 -- of the order that's submitted and making sure that
11 everybody's comfortable with that proposed -- that it
12 incorporates the comments from the Trustee. I'm going to
13 grant the application.

14 Debtor needs assistance to provide accurate
15 schedules. Mr. Schleizer is involved in this case and is
16 working on it and needs the assurance that he's going to be
17 compensated for his work. I find that the standards under
18 Section 327, as approved by the -- articulated by the Fifth
19 Circuit and the text itself, is satisfied here. So it's
20 approved. Okay. Anything else?

21 And again, Ms. Stephenson and (indiscernible) the
22 order that gets uploaded, you all are going to let Ms.
23 (indiscernible) know.

24 MS. STEPHENSON: Yes. Yes, Your Honor.

25 THE COURT: Okay. Anything else?

1 MS. STEPHENSON: Thank you. That's all I have,
2 Your Honor.

3 THE COURT: Okay. Anything else anyone wants to
4 talk about? Okay. Folks, I appreciate everyone's time.
5 Thanks for everyone's patience. Do we need to set another,
6 what I would call an omnibus hearing date at this time? Or
7 folks want to reach out to my case manager and have one.
8 We'll be here on the 14th at 1:00. That's probably not
9 enough time for full notice on something, but if there's an
10 emergency issue and folks want to set it on that date, fine
11 with me. I'm not saying I'll grant it, but certainly we'll
12 be here on that date. We can use that date if we need
13 another omnibus hearing date for something. Sounds like
14 folks need to get some time in working on issues.

15 I did see something, Mr. Ridulfo, on a motion to
16 quash. Is that something I need to -- do we need to set a
17 date on that, or maybe you all can just reach out to my case
18 manager if you need something there.

19 MR. RIDULFO: I think so, Your Honor.

20 THE COURT: Okay. So I won't do anything there.
21 I just wanted to acknowledge it and give you -- I saw you
22 here.

23 MR. RIDULFO: Thank you, Your Honor.

24 THE COURT: Anything from the Committee in Alex
25 Jones?

1 MS. BRAUNER: Nothing from us, Your Honor.

2 THE COURT: All right, Mr. Zensky and Ms. Brauner,
3 I really appreciate your participation today. Anything from
4 the Subchapter 5 Trustee in the FSS case? Anything else we
5 need to talk about today? Okay. Anything from anyone?

6 Alrighty, folks. Well, everyone go get some
7 lunch. Thank you very much. You all have a good day.

8 CLERK: All rise.

9 (Proceedings adjourned at 12:34 p.m.)

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CERTIFICATION

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

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Date: January 26, 2023